RECORD, CASE No. 14,734.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 825.

ARNOLD, CONSTABLE & CO., APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 United States Circuit Court for the Southern District of New York.

In the Matter of the Application of the Collector of Customs at New York for a Review of the Decision of the Board of General Appraisers as to the Rate and Amount of Duty on Certain Merchandise Imported by Arnold, Constable & Co., per "Alaska," October 13th, 1890.

To the honorable the circuit court of the United States for the southern district of New York:

The Secretary of the Treasury having decided to apply to this court, being dissatisfied with the following-named decision, and your petitioner, the collector of customs for the collection district and port of New York, being likewise dissatisfied with the decision made on the 4th day of February, 1891, by the board of general appraisers, designated by the Secretary of the Treasury for and on duty at said port, pursuant to the act of Congress entitled "An act to simplify the laws in relation to the collection of the revenues," reviewing and reversing the decision of your petitioner as to the rate and amount of duty on certain 4 cases, A. C. C. # 6478, 6479, 6565, 6568, containing knit woolen shirts, drawers, and hosiery imported per "Alaska" October 13th, 1890, and entered for con-

2 sumption by the said Arnold, Constable & Co., your said petitioner respectfully makes this application to the court and sets forth herein the errors of fact and law complained of, to wit:

The said merchandise was entered at the custom-house at said port as woolens and hose.

The same was classified and assessed for duty by your petitioner, viz., at 49½ cents per pound and 60 per centum ad valorem under and by virtue of paragraph 396 of the act of Congress approved October 1st, 1890, entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," in the enumeration and description of "clothing, ready-made, and articles of wearing apparel of every description made up or manufactured wholly or in part not specially provided for in this act," and the entry thereof was liquidated accordingly.

The said owners and importers, being dissatisfied with the decision of your petitioner assessing duty as aforesaid, gave notice to your petitioner within ten days after said liquidation and ascertainment of duty, setting forth the reasons of their objection thereto, claiming the said merchandise to be dutiable at 44 cents per pound and fifty per centum ad valorem under paragraph 392 of the same act in the description therein of wool or worsted "knit fabrics and all fabrics made on knitting machines or frames."

Whereupon your petitioner duly transmitted the invoices and all the papers and exhibits connected therewith to the said

3 board of general appraisers, which board, proceeding to hear and determine the questions of law and fact involved, sus-

tained the claim of the said owner and importer in the premises. The record of their decision to this effect appears in a communication addressed to your petitioner under date of the 4th of February, 1891, a copy of which is hereto attached and made part hereof.

And for the errors of law and fact in the decision of the said board in this regard, herein complained of, your petitioner states:

1. That the said board were in error in holding that the goods in question are specially provided for by paragraph 392 of the said act, within the description of "knit fabrics" and all fabrics made on "knitting machines or frames," and, although concededly "wearing apparel," that they are accordingly excepted from the provisions of paragraph 396 of that act for "clothing, ready-made, and articles of wearing apparel of every description."

2. Also in holding that the phrase "knit fabrics," as used in paragraph 392 of that act, is of a more narrow or specific designation than the phrase "wearing apparel," when, as a matter of fact, all knit fabrics are not wearing apparel, while wearing apparel embraces all knit goods of the description of those in question.

3. Also in holding that the articles in question are "fabrics" or "knit fabrics" as commonly known.

4. Also in holding that the articles in question are commercially known as "knit fabrics," or that the term "knit fabrics" described more than the mode of manufacture or the manufactures
4 themselves, as they proceed from the knitting machine or frame, in which condition they are in no sense "ready-made clothing or wearing apparel," but simply the fabric from which the "ready-made clothing or wearing apparel" is afterwards manufactured.

5. Also in reversing the decision of your petitioner that the articles in question are specifically provided for as wearing apparel by paragraph 392 of the act aforesaid, dutiable accordingly.

Accordingly your petitioner respectfully prays this court to order the said board of general appraisers to return to the court the record and evidence taken by the said board, together with a certified statement of the facts involved in the case, and of their decision thereon, and thereupon to proceed to review said decision and to determine the questions of law and fact involved in the same.

J. J. COUCH,
Spec. Dep. Collector of Customs.

5 Copy.

In the Matter of the Protest No. 3152A | 16453 of Arnold, Constable & Co. against the Decision of the Collector of Customs at the Port of New York as to the Rate and Amount of Duties Chargeable on Certain Knit Hosiery Imported per Alaska, October 15, 1890.

Before the U. S. general appraisers at New York, February 4, 1891.

Opinion by Somerville, G. A.

The goods in question consist of certain knit hosiery, viz., under-

shirts and drawers made on knitting frames and of the material of wool.

The articles were classified and assessed for duty under paragraph 396 of the tariff act of October 1st, 1890, as articles of "wearing apparel" made of wool and "not specially provided for" in that act.

The importers contend that the goods are commercially known to the trade as "knit fabrics," and being made on knitting frames are specially provided for by that designation in paragraph 392 of said tariff act, and that they should be classified and assessed accordingly.

Paragraph 396, under which the collector made the classification, described the articles intended to be assessed thereunder as "clothing, ready-made, and articles of wearing apparel of every description made up or manufactured wholly or in part, not specially provided for in this act, * * * composed wholly or in part of wool (or) worsted."

The corresponding paragraph (T. I., 366) in the act of March 3, 1883, contained substantially the same language, but "knit
6 goods" were in terms excepted from the provisions.

Paragraph 392 of the new tariff law, under which the importers claim the goods to fall, applies to "woolen or worsted cloths, shawls, knit fabrics, and all fabrics made on knitting machines or frames * * * made wholly or in part of wool (or) worsted * * * not specially provided for" in that act. This paragraph is condensed in part from paragraphs 362 and 363 (tariff index) of the act of March, 1833, the former of which embraced "woolen cloths, woolen shawls, and all manufactures of wool of every description," and the latter "flannels, blankets, hats of wool, knit goods, and all goods made on knitting frames * * * composed wholly or in part of worsted," &c.

The phrase "knit fabrics" has thus been substituted for the words "knit goods."

The words "wearing apparel" are not words of technical, but of popular signification. They indicate the use for which an article is designed and to which it is ordinarily put, rather than the specific name by which it is known. They have no peculiar mercantile or commercial signification, being "a general description or genus comprehending many species." In Maillard *vs.* Lawrence, 16 How. (U. S.), 251, the Supreme Court of the United States, taking this view of the law, held that a shawl was an article of wearing apparel, and dutiable as such, although many mercantile men testified that it
was not so regarded in the trade. The common knowledge of
7 court was invoked to the contrary; that the established and popular import of the words "wearing apparel" included shawls. There is just as little doubt, it may be admitted, that the articles under consideration—knit undershirts and drawers, socks and stockings—are wearing apparel. Such articles would be admitted free of duty as such under paragraph 752 of the free list, if accompanying and in use by a passenger arriving in this country from abroad as readily as his coat, his vest or pantaloons would be. So they would be free from execution under a law exempting "wearing apparel" from sale under legal process, as is done in most of the

American States. But they are also "knit fabrics," or "fabrics made on knitting machines or frames." Are they to be construed as being "specially provided for" by this designation, so as to be excepted from the general description of "clothing, ready-made, and articles of wearing apparel of every description," as used in paragraph 396? It may be argued that the amendment of the old law, which excepted "knit goods" from the words wearing apparel, made of wool or worsted, effected by striking out the exception, indicates an intention to change the law on this subject. It is answered by the importers that this exception was superfluous and unnecessary, and the silk schedule is cited, where paragraph 413 speaks of "clothing, ready-made, and articles of wearing apparel of every description, including knit goods." Congress, it is said, found it necessary here to bring knit goods into the category of wear-
8 ing apparel by so declaring in terms. As the law now stands, therefore, the apparent inference is that the law-makers did not suppose that knit goods would have been dutiable as wearing apparel unless it had been so provided in terms. The mere change of language in the revision of statutes by the omission of words is not significant of any change of legislative intention where such words were superfluous or might be implied with fair construction. Endlich on Stat., sec. 378–383.

We next inquire the meaning of the phrase "knit fabrics" and "all fabrics made on knitting machines or frames," as used in paragraph 392. Is it more or less specific than "wearing apparel"? "Knitting is the art of forming looped fabrics or textures with the use of needles and a single continuous thread." (Encyc. Brit., vol. 14, p. 127.)

A fabric is "that which is fabricated," and to fabricate is "to form by art or labor; to manufacture." Webster's Dict. The phrase "knitted fabrics" seems to be one of commercial designation, and if such be the case, or the phrase be one of more minute description, it must be held to predominate over descriptive words of a generic character. Robertson *vs.* Salomon, 130 U. S., 412; Arthur *vs.* Lahey, 96 U. S., 112. In Spon's Encyc. of Manufactures (1882), vol. 2, p. 1186–1189, we find the history of "knitted fabrics—hosiery" given under that nomenclature at great length, and showing the growth of this industry for the past two centuries and the improvement of knitting or hosiery machinery, especially in the last fifty
9 years. The word "fabric" is uniformly used there to designate not only socks and stockings, but shirts, drawers, and various other articles produced by the art of knitting, which may be classed as hosiery, as well as piece goods. Advertisements by the trade are seen every day in the public press, and are produced before us, of "wool, knit fabrics, comprising socks, stockings, gloves, mitts, jackets, Swiss ribbed vests, and drawers," etc. A number of witnesses also testified as to the fact that the term under consideration is one of well-known commercial meaning in the trade. The following phrases have been held by the courts to have a commercial designation among traders and importers sufficient to fix their classification specifically as belonging to a named class of merchan-

dise. "Silk laces" and "thread laces" (Arthur *v.* Lahey, 96 U. S., 112); "Japan leather" (Morris *v.* Arthur, 95 U. S., 144); "Merino goods" (Greenleaf *v.* Worthington, 26 Fed. Rep., 303).

Whether the descriptive name under consideration (par. 392) be a commercial designation or not, it is more narrow and specific than the common one of wearing apparel, where the use of the article determines the classification. It *ex vi termini* withdraws knit fabrics or hosiery made on knitting frames or machines as these fabrics are of every kind from the category of clothing, ready-made, or wearing apparel by the special provision made therefor in par. 392 of the tariff law of October 1, 1890.

The suggestion that the words knit fabrics derives color of
10 meaning from the antecedent word "cloths" is without force. It is equally associated with the word "shawls," which is known to be wearing apparel. The evidence before us shows that the percentage of knit fabrics which come from abroad, outside of hosiery, such as stockings, socks, gloves, shirts, and drawers and other wearing apparel, is comparatively insignificant.

If the question under consideration were doubtful we would be compelled, under established rules of construction, to give the benefit of that doubt to the importers.

We accordingly hold that the merchandise in question should have been classified as contended by the importers under paragraph 392 and not paragraph 396 of the present tariff law.

The decision of the collector is reversed, and he will proceed to reliquidate the entry in the manner and time prescribed by law.

The invoice and entry are herewith returned.

(Signed) HENDERSON M. SOMERVILLE,
CHARLES H. HAM,
Board of U. S. Gen'l Appraisers.

Collector of customs, New York.

Endorsed: No. 374. United States circuit court for the southern district of New York. In the matter of the application of the
11 collector of customs at New York for a review of the decision of the general appraisers as to the rate and amount of duty on certain merchandise imported by Arnold, Constable & Co., per "Alaska," Oct. 13, 1890. Petition & order. Edward Mitchell, United States attorney and attorney for petitioner. Post-office building, New York city. To the clerk of the U. S. circuit court for the southern dist. of New York. U. S. circuit court. Filed Mar. 4, 1891. John A. Shields, clerk.

12 At a stated term of the United States circuit court for the southern district of New York, held in the United States court and post office building, in the city of New York, on the 4th day of March, A. D. 1891.

Present: Hon. E. Henry Lacombe, circuit judge.

In the Matter of the Application of the Collector of Customs at New York for a Review of the Decision of the Board of United States General Appraisers as to the Rate etc., of Duty, on Certain Merchandise Imported by Arnold, Constable & Company, per "Alaska," October 13, 1890. 374.

Upon reading and filing the petition herein and upon motion of Edward Mitchell, United States attorney and attorney for the petitioner, it is ordered that the board of United States general appraisers sitting at the port of New York return to this court the record and evidence taken by them in the above matter, together with a certified statement of the facts involved and their decision thereon.

E. HENRY LACOMBE,
Circuit Judge.

13 In the Circuit Court of the United States for the Southern District of New York.

In the Matter of the Application of the Collector of Customs at New York for a Review of the Decision of the Board of U. S. Gen'l Appraisers as to the Rate, etc., of Duty on Certain Merchandise Imported by Arnold, Constable and Company, per "Alaska," Oct. 13, 1890. Suit No. 374.

Return of the Board of United States General Appraisers to the Order of Hon. E. Henry Lacombe, Dated New York, March 7th, 1891.

The board of United States general appraisers sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter and of the facts involved therein as ascertained by them:

They state that on the 12th day of December, 1890, a letter dated Dec. 10, 1890, which is hereto annexed and marked Exhibit "A," was received from the collector of customs at New York submitting, under the provisions of sec. 14 of the act of June 10, 1890, the protest described and marked as follows:

(EXHIBIT "B.")

Collector's No., 16453.
Board No., 3152 A.
Protester, Arnold, Constable & Co.
Vessel, "Alaska."
Date of entry, Oct. 15, '90, "B."

14 EXHIBIT A.

H. E. E. J. J.

CUSTOM-HOUSE, NEW YORK,
COLLECTOR'S OFFICE, *Dec.* 10, 1890.

To the hon. board of U. S. gen'l appraisers, New York.

GENTLEMEN: In pursuance of the requirements of section 14 of the act of June 10, '90, I transmit herewith the protest No. 3152 A, 16453, of Arnold, Constable & Co. from the assessment of duty by this office at the rate of 49½c. per pound and 60% ad valorem on certain so-called "knit hosiery" imported by them per Alaska, Oct. 15, '90.

I have to state that the merchandise was returned by the appraiser upon the invoice as "wool wearing apparel," and duty was accordingly assessed thereon at the rate of 49½c. per pound and 60% ad valorem, under the provisions of paragraph 396 of the tariff act of Oct. 1, '90. Reference is made to the special report of the U. S. appraiser herewith as to the character of the merchandise.

The entry and invoices covered by the above protest are enclosed herewith.

The naval officer concurs in the decision of this office.

Very respectfully, J. J. COUCH,
Special Deputy Collector.

4 enclosures.

15 Endorsed: 3152 A. Custom-house, collector's office, New York city, Dec 10, 1890. Joel B. Erhardt, collector. Knit hosiery. Subject, protest #16453. Arnold, Constable & Co. Office U. S. general appraisers, New York. Received Dec. 12, 1890. No. of inclosures, 4.

16 EXHIBIT "B."

NEW YORK, *November 29th*, 1890.

To the collector of the port.

SIR: We hereby protest against your ascertainment, liquidation, demand, and exaction of duties at the rate of forty-nine and one-half cents per pound and sixty per centum ad valorem upon our importation of knit hosiery, undershirts and drawers, per Str. Alaska, October 15th, 1890, claiming that said goods are properly and lawfully dutiable at the rate of forty-four cents per lb. and fifty per cent. ad val., under the provisions of par. 392, N. T. (act of October 1st, 1890), which imposes the latter rate upon "knit fabrics, and all fabrics made on knitting machines or frames, and all manufactures of every description made wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, not specially provided for in this act, valued at above * * * forty cents per pounds."

We pay the amount exacted in order to get possession of our goods, and claim to have the difference refunded.

ARNOLD, CONSTABLE & CO.

[Endorsed:] E. No. 168490. Liqud. Nov. 21st, 1890. A. C. C. 6478, 6479, 6565. And also other marks and numbers as the foregoing protest is intended to apply to all similar merchandise embraced in the importations therein specified.

Endorsed: 16453. 3152 A. Arnold, Constable & Co., Alaska. Knit hosiery, &c. Custom-house, New York. Nov. 29, 1890. Received, 2167, pd. Vessel: Alaska. Entry, 1890, Oct. 15. Liq'ed. Paid, '90, Nov. 21. Protested 1890, Nov. 29.

17 That accompanying the letter of the collector aforesaid (Ex. "A") was a report from the United States appraiser at New York describing the merchandise subject of said protest No. 3152 A, 16453, which report is hereto annexed marked Exhibit "C."

EXHIBIT "C."

PORT OF NEW YORK,
APPRAISER'S OFFICE, 402 WASHINGTON STREET, *Dec.* 5, 1890.

M. W. Cooper, Esq., appraiser.

SIR: Referring to protest 16453, of Messrs. Arnold, Constable & Co., against an assessment of duty of 49½ cts. per lb. & 60% ad valorem on certain knit hosiery, undershirts, and drawers, imported ex. "Alaska" October 15, 1890, appellants claiming that said articles are dutiable at 44 cts. per lb. & 50% ad valorem under the provisions of paragraph 392, N. T., act. of Oct. 1st, 1890, I have to report that the goods in question consisted of wool hosiery, shirts, and drawers, made on knitting frames, which were returned under paragraph 396, N. T., act of Oct 1st, 1890, as wool wearing apparel, at a duty — 49½ cts. per lb. & 60% ad valorem. (See sec. 24, report of the conference of local appraisers, October 13-30, 1890.)

Very respectfully, D. F. BURKE,
Ass't Appraiser 5th Division.

18 Endorsed: 3152 A. Port of New York, appraiser's office, Dec. 5, 1890. D. F. Burke, ass't appraiser. Subject: Protest 16453. Arnold, Constable & Co., knit hosiery, &c. "Alaska," Oct. 15, '90. Respectfully forwarded to the collector. Approved. M. W. Cooper, appraiser. 2167 Po.

19 That on the 17th day of December, 1890, the sworn testimony of several witnesses was taken by the board in said matter, which testimony is hereto annexed, marked Exhibit "D." The statement of A. L. Brown, one of said witnesses, calling the attention of the board to certain mistakes made in the stenographer's notes of his testimony is also hereto annexed, marked Exhibit "A A."

20 EXHIBIT "D."

3152 A.

Testimony before General Appraiser Wilkinson, December 17, 1890, *on an Importation of Wool Knit Underwear by Arnold, Constable & Company.*

21 EXHIBIT "D."

3152 A.

Testimony Taken before General Appraiser Wilkinson December 17*th*, 1890, *on an Importation of Wool Knit Underwear by Arnold, Constable & Co.*

Mr. A. L. BROWN, of the firm of Mills & Gobbs, being called, testified as follows:

Examined by Mr. COUGHTRY:

Q. Are you in charge of the hosiery department of the firm of Mills & Gibb?

A. Yes, sir.

Q. Do you make frequent visits abroad?

A. I go abroad twice a year.

Q. To pick out and purchase goods and the remainder of the year you sell them here?

A. Yes, sir.

Q. Your business is wholesale; selling to the trade?

A. Yes.

Q. How long have you been engaged in the business?

A. Since 1858, and continuously since 1870.

Q. Will you kindly look at these goods and see if you can tell what they are?

A. Some are cotton, some cotton and wool, some morina, and some vicuna, a species of wool grown in Spain.

Q. Are some of these samples part wool and part cotton?

A. Yes.

Q. And some are all wool?

A. Yes.

22 Q. Now, will you kindly tell us what these goods are known as in this city?

A. Hosiery fabrics.

Q. Are they so known abroad?

A. Yes.

Mr. WILKINSON: You refer to the socks?

A. I am referring to the whole business—drawers, undershirts, and socks—all made on the same frames.

Q. Is hosiery or hosiery fabrics not a general classification of all this kind of goods in the trade?

A. The people who make them were formerly called "hand-frame

fabric knitters." The paten-knitting machine then came into use and they changed the name of them to the "paten-frame fabric knitters."

Q. How are these goods designated by large manufacturers who ship their goods to this country?

A. They speak of them as hand-made fabrics and paten-frame fabrics.

Mr. WILKINSON: Do they speak of them as hosiery?

A. Often it is as hosiery.

Q. Are all of those goods made on knitting machines or frames?

A. Yes, sir; but there are 5 or 6 different frames, but all known as knitting frames.

Q. Do you know whether the word "fabric" is used in connection with this class of goods in this country?

A. I have always used it, and I think all who are well up in the hosiery trade use it; but sometimes, for convenience sake,
23 some of them who are not well versed in the trade speak of it as hosiery. We always speak of it as hosiery fabrics, referring to the general business which we do.

Mr. WILKINSON: If you went into a store here and asked to see some hosiery would they show you any undershirts and drawers?

A. It depends entirely upon the intelligence of the man who is waiting on me. Some of these men only get a few dollars a week and their intelligence is not very remarkable; they get more as they become more familiar with the names of things.

Mr. WILKINSON: Have you seen these names advertised here in our papers?

A. I think I have, but I am not quite sure. I have seen it frequently in Europe.

Q. Will you tell what you have seen in Europe?

A. Messrs. I. & R. Morley & Co. speak of the superiority of their hand and paten fabrics, and they sell no piece goods whatever.

Q. Are they very large makers of these goods?

A. Supposed to be the largest in the world; certainly in England.

Mr. WILKINSON: Are they ever known abroad as wearing apparel?

A. I have never heard of it abroad. If you spoke of wearing apparel they would send you to a ready-made-clothing dealer.

Q. In this country do you ever hear them called wearing apparel?

A. Never.

24 Q. Then you don't think that would be a commercial designation.

A. I think not. I noticed a sign on the corner of 33rd St. one day while I was on a street car. It read: "Boys' and men's wearing apparel." I got off the car and found that they keep nothing there but boys' and men's ready-made clothing.

Q. Are you familiar with the goods of —?

A. In every instance in Switzerland, where these goods are manufactured, they call them "fabricants."

Q. What is your understanding in general trade and commerce of the term fabrics—the fabrics made on knitting machines?

A. A fabric, as I have always understood it, is something made on the loom where there is a waft and woof.

Q. Do you sell many of these goods in this city?

A. Yes; sold large quantities for many years.

Q. Have you ever, in your dealings with those to whom you sell them, ever used the general expression of wearing apparel in connection with them?

A. Never.

Q. And the dealers to whom you sell these goods don't generally deal in ready-made clothing or any outside garments?

A. Not to my knowledge. If you went into a house that sold them and asked for wearing apparel they would send you to the ready-made-clothing department of Rogers, Peet & Co. or some other clothing-house.

Q. If you were asked in regard to fabrics made on knit-
25 ting frames, what would you conclude them to be?

A. I should say they meant hosiery stock—hosiery stock in the general term and fabrics or hosiery. I speak of them to my second man in the department as "the fabrics." In speaking to an outsider I give them a little different form, according to his intelligence.

Mr. Ed. A. Newell, called, testified as follows:

Examined by Mr. Coughtry:

Q. What is your business?

A. Men's furnishing goods, 859 Broadway.

Q. You are in business in your own name?

A. Yes, sir; E. A. Newell; have been for over 27 years.

Q. Engaged in the same kind of business?

A. Same business and always on Broadway.

Q. Now, you deal in under drawers, shirts, and stockings similar to these?

A. That is part of my business.

Q. Do you deal in wearing apparel?

A. Only house coats and lounge coats, &c., for house use.

Q. Now, is this knit underwear known as knit fabrics?

A. Yes; that is the manufacturers' term, but the general customer understands it as hosiery or underwear. The manufacturers' technical term would be knit fabrics.

Q. If any one should come in your store and ask for wearing apparel or clothing—if you had any ready-made clothing—would you answer that you had?

A. I should say we had not.

Q. If they asked for wearing apparel?

26 A. I should say we had none. I should refer them to a clothing store for wearing apparel.

Q. If a man wanted wearing apparel what would you show him?

A. I would say we did not keep it.

Q. You, of course, have bought goods in large quantities from the different dealers?

A. Fairly large quantities.

Q. In your dealings have you ever known them to use or used yourself the term wearing apparel as applying to these goods?

A. No, sir.

Q. And the customers do not ask for wearing apparel when they want such goods as these?

A. It has never been known to me.

Mr. ARMINE HARTMAN, being called, stated as follows:

Examined by Mr. COUGHTRY:

Q. With what firm are you connected?

A. I am a member of the firm of Ed. Shiteen & Co.

Q. What do you deal in?

A. Mostly in hosiery and underwear.

Q. How long have you been engaged in the hosiery business?

A. About 30 years.

Q. You are familiar with the trade, I presume.

A. Yes.

Q. You have been abroad?

A. Yes.

Q. Have seen these or similar goods made?

27 A. Yes.

Q. Do you know what they are composed of in the method of manufacture?

A. Yes.

Q. Have you ever heard the term wearing apparel applied to them?

A. No, sir.

Q. If any one should come in your store and ask for wearing apparel what would you answer them?

A. We have none.

Q. If they should come in and ask for knit fabrics would you understand what they meant?

A. Yes; these are knit fabrics (indicating samples).

Q. Is that known in the trade as knit fabric?

A. Yes; a knit fabric is an article made by looping one loop to another. It is contrary to the web. Hosiery or underwear is a knit fabric, and the knit is purposely done to make the article elastic and fit to the arm or leg.

Mr. WILKINSON: Are not a great majority of knit fabrics completed articles?

A. They are completed articles right on the loom.

Mr. WILKINSON: Are not a great majority of any fabrics imported into America completed articles?

A. Certainly.

Q. I suppose there are knit fabrics that are not completed articles?

A. Well, I don't know.

Mr. WILKINSON: The question I ask is, is not the large
28 majority of knit fabrics imported into this country in the shape of completed articles?

A. Yes, sir.

Q. Do you know of any imported in piece goods?

A. Yes, sir; I imported some myself. It is made like this (indicating), only the knitting frame is very large, but it is made in the same way of looping one loop to another to make it elastic, only tubes are not used or could not be used for cloth or wearing apparel; it is used for elastic jackets or Jersey jackets or tight-fitting garments.

Mr. WILKINSON: Could not you have a knit fabric put up in the same shape as a bolt of calico? Couldn't you have a knit fabric ruled like a bolt of calico?

A. Certainly; the thing is cut afterwards.

Q. Can you tell us about the proportion of knit fabrics made on knitting frames of all kinds that will be knit into hosiery?

A. About 50 % of it would be stockings and socks.

Q. What percentage would be undershirts and drawers?

A. Nearly the whole balance; say 30 %.

Q. How much in gloves?

A. That leaves only 20 %.

Q. Will you tell us about what proportion of the goods made on knitting frames or articles made on knitting frames of any kind come to this country which are not in the form of stockings—underwear—fit to put on the person without further manufacture?

A. It is entirely insignificant.

29 Q. Is it one per cent.?

A. That is difficult to estimate. I do not think it is more than one.

Q. I mean not made up into shirts, drawers, underwear, &c.

A. There is none; it is insignificant.

Mr. A. L. BROWN, recalled, stated as follows:

Examined by Mr. COUGHTRY:

Q. Mr. Brown, when you were in London last, did you have an interview with Mr. Donn, the head of I. & R. Morley's business, in regard to similar goods to these?

A. I did.

Q. Is Mr. Donn very familiar with these goods? Has he been acquainted with them for many years?

A. He is a man of about 76 years of age, bright, smart, and as active as I am, and has been in nothing else in his life but the stocking trade.

Q. While you were over there did you see a particular ladies' undergarment of some peculiar shape?

A. I did.

Q. Was it known as a "union"? Describe it, please.

A. The vest or undershirt and the drawers were one complete

piece. It was put in the knitting machine as a thread and taken out in this form—in every way complete.

Q. I suppose you spoke to Mr. Dunn in regard to other goods of this description and class.

A. I didn't speak of them. We always speak about them as fabrics.

30 Mr. ALBERT KASKILL, being called, testified as follows:

Examined by Mr. COUGHTRY:

Q. What is your business?

A. Gentlemen's furnishing goods.

Q. What is your firm?

A. Kaskill & Kaskill.

Q. Where is your place of business?

A. 20 W. 23rd St.

Q. What line of goods do you handle?

A. Those similar to Mr. Newell. We import hosiery. We manufacture shirts, scarfs, and other things.

Q. Do you deal in knit goods—hosiery?

A. We do; yes, sir.

Q. In case any one should come into your store and ask for wearing apparel what would you show them?

A. We would say that we did not keep it. I do not think any of our clerks would say we dealt in them; they would send them where they did.

Q. If they should come in and ask for knit fabrics?

A. They would take them down to the hosiery counter and ask them if they wanted hosiery, underwear, or socks.

Q. Have you ever known such things as this to be called wearing apparel?

A. No.

Q. Have you ever known them under any other name than knit goods or knit fabrics?

A. That is the term.

Q. Have you ever heard the term wearing apparel applied to them?

31 A. Never.

Mr. JOHN GIBB, of the firm of Mills & Gibb, being called, testified as follows:

Examined by Mr. COUGHTRY:

Q. Do you deal largely in knit goods?

A. Yes, sir.

Q. Knit fabrics?

A. Quite largely. We deal in hosiery and underwear.

Q. Have you ever known articles similar to these in question to be called wearing apparel?

A. Never.

Q. Have you ever known of them being called knit fabrics?

A. Why certainly.

Q. If any one should come in your store and make inquiry for wearing apparel would you be apt to show them these goods or any goods in which you deal?

A. If they should ask for wearing apparel I should say we didn't keep it.

Q. Will you tell me what you understand wearing apparel to be according to the trade and commerce?

A. Wearing apparel I should understand to be boys' and men's ready-made clothing—costumes for ladies; outside garments.

Mr. WM. C. PHELPS, being called, testified as follows:

Q. What is the business of your house?

A. Ready-made clothing, merchant tailoring, and furnishing goods.

32 Q. Do you furnish underwear?

A. We do.

Q. Goods like these on exhibition here?

A. We do.

Q. If any one should come in your store and ask for wearing apparel, what would you show him?

A. Clothing.

Q. What kind of clothing?

A. Suits of clothing, overcoats—outside clothing.

Q. If any one should come in and ask for fabrics made on knitting frames, what would you show him?

A. I should show him hosiery.

Q. The general name among experts includes drawers and undershirts, as well as stockings, &c.?

A. Yes, sir.

Q. You have been in business a great many years?

A. Thirty-five years.

Q. In trade and commerce what do you understand, according to your experience, by the form wearing apparel?

A. Suits, overcoats, and outside garments.

Mr. JNO. A. BROOKS, of Brooks Bros., clothiers, being called, testified as follows:

Q. Does your house sell underclothing?

A. Yes.

Q. And also wearing apparel?

A. Well, we sell all sorts of clothing. I should understand by the word- wearing apparel external clothing. I should show a man that asking for wearing apparel.

Q. And a person coming in and asking for fabrics made

33 on knitting frames, what would you show him?

A. If a person came in and asked for underwear I should show him underwear. I don't know whether a person would come in and ask for fabrics made on a knitting frame. We call our business "clothing and underwear," making that distinction.

Mr. JAMES MCCREARY, of the house of James McCreary & Co., called, testified as follows:

Examined by Mr. COUGHTRY:

Q. Mr. McCreary, have you been in business a great many years?
A. Yes, sir.
Q. What is your understanding of the term "wearing apparel"?
A. My understanding of the term "wearing apparel" is clothing that is apparent—that may be seen.
Q. Outside garments?
A. Yes; that portion of a man's or woman's or child's dress that is seen—that is apparent.
Q. You deal in such garments for women and children?
A. Yes.
Q. You also deal in goods or fabrics made on knitting frames?
A. Yes, sir.
Q. What do you understand that term to include?
A. I understand the term knit fabrics to include all such goods as these, viz., stockings, socks, undershirts, drawers, and those
34 complete costumes that have been described, and knit shawls, knit hoods, knit cloths. It includes a great variety of goods.
Q. You agree, then, with the testimony of the witnesses that have just preceded you in regard to what wearing apparel is?
A. Fully.
Mr. WILKINSON: Would you call a shawl wearing apparel?
A. A shawl is wearing apparel because it is external.
Q. Would you call an outer shirt wearing apparel?
A. Yes.
Q. And a scarf?
A. Wearing apparel; yes.
Q. You call a shirt wearing apparel?
A. I do; because it is apparent.
Q. Mr. McCreary, are the woolen fabrics that come into this country mostly completed articles or piece goods—that is, knit fabrics?
A. I should say that 99 % were completed articles. I really believe that not more than one-half of one per cent. of the knit fabrics coming into this country are in the condition that requires the dealer or seemster to make them up for use. That is an opinion; I haven't any data upon which to state that.

35 EXH. "A A."

JANUARY 15, 1890.

GENTLEMEN: I desire to call your attention to certain mistakes occurring in the stenographer's notes of my testimony before your board in the "knit goods" case of Messrs. Arnold, Constable & Co., heard Dec. 17, 1890, which I ask your leave to correct.

1st. "Q. What is your understanding, in general trade and commerce, of the term fabrics?"

My answer to this should be:

"A. In the present instance the fabrics made on knitting machines."

2nd. After which, in answer to some question which does not appear in the notes, I reply:

"A. A textile fabric, as I have always understood it, is something made on the loom, where there is a weft and woof."

3rd. Also I see the term "paten knitting machines" and "paten fabrics" used. The word is "patent," not "paten."

Very respectfully, A. L. BROWN.

To the board of U. S. general appraisers at New York city.

36 Endorsed: 2866 M. 3152 A. A. L. Brown, of Mills & Gibb, New York, Jan'y 15, '91, asks correction of alleged errors in short-hand, his evidence before board Dec. 17, '90, knit goods. Office U. S. general appraisers, New York. Received Jan. 16, 1891.

37 That on the 4th day of February, 1891, the board of general appraisers rendered its decision in the matter of said protest No. 3152 A | 16453, a copy of which is hereto annexed, marked Exhibit "E:"

EXHIBIT E.

Before the U. S. general appraisers at New York February 4, 1891.

In the Matter of the Protest 3152*a*, of Arnold, Constable & Co., against the Decision of the Collector at the Port of New York as to the Rate and Amount of Duties Chargeable on Certain Knit Hosiery, Imported per Alaska, October 15, 1890.

Opinion by Somerville, General Appraiser.

The goods in question consist of certain knit hosiery, viz., undershirts and drawers, made on knitting frames and of the material of wool.

The articles were classified and assessed for duty under paragraph 396 of the tariff act of October 1, 1890, as articles of "wearing apparel," made of wool and "not specially provided for" in that act.

The importers contend that the goods are commercially known to the trade as "knit fabrics," and, being made on knitting frames, are specially provided for by that designation in paragraph 392 of said tariff act, and that they should be classified and assessed accordingly.

Paragraph 296, under which the collector made the classification, described the articles intended to be assessed thereunder as

38 "clothing, ready-made, and articles of wearing apparel of every description made or manufactured wholly or in part, not specially provided for in this act, * * * composed wholly or in part of wool (or) worsted."

The corresponding paragraph (T. I., 366) in the act of March 3,

1883, contained substantially the same language, but "knit goods" were in terms excepted from the provisions.

Paragraph 392 of the new tariff law, under which the importers claim the goods to fall, applies to "woolen or worsted cloths, shawls, knit fabrics, and all fabrics made on knitting machines or frames * * * made wholly or in part of wool (or) worsted, * * * not specially provided for" in that act. This paragraph is condensed in part from paragraphs 362 and 363 (tariff index) of the act of March, 1883, the former of which embraced "woolen cloths, woolen shawls, and all manufactures of wool of every description," and the latter "flannels, blankets, hats of wool, knit goods, and all goods made on knitting frames * * * composed wholly or in part of worsted," etc.

The phrase "knit fabrics" has thus been substituted for the words "knit goods."

The words "wearing apparel" are not words of technical but of popular signification. They indicate the use for which an article is designed and to which it is ordinarily put, rather than the specific name by which it is known. They have no peculiar mercantile or commercial signification, being "a general description or
39 genus comprehending many species." In Maillard *vs.* Lawrence, 16 How. (U. S.), 251, the Supreme Court of the United States, taking this view of the law, held that a shawl was an article of wearing apparel and dutiable as such, although many mercantile men testified that it was not so regarded in the trade. The common knowledge of the court was invoked to the contrary—that the established and popular import of the words "wearing apparel" included shawls. There is just as little doubt, it may be admitted, that the articles under consideration—knit undershirts and drawers—are wearing apparel. Such articles would be admitted as free of duty as such under paragraph 752 of the free list if accompanying and in use by a passenger arriving in this country from abroad as readily as his coat, his vest, or pantaloons would be. So they would be free from execution under a law exempting "wearing apparel" from sale under legal process, as is done in most of the American States. But they are also "knit fabrics" or "fabrics made on knitting machines or frames." Are they to be construed as being "specially provided for" by this designation so as to be excepted from the general description of "clothing, ready-made, and articles of wearing apparel of every description" as used in paragraph 396? It may be argued that the amendment of the old law, which excepted "knit goods" from the words wearing apparel, made of wool or worsted, effected by striking out the exception, indicates an intention to change the law on this subject. It is answered by the
40 importers that this exception was superfluous and unnecessary, and the silk schedule is cited where paragraph 413 speaks of "clothing, ready-made, and articles of wearing apparel of every description, including knit goods." Congress, it is said, found it necessary here to bring knit goods into the category of wearing apparel by so declaring in terms. As the law now stands, therefore, the apparent inference is that the law-makers did not suppose that

knit goods would have been dutiable as wearing apparel unless it had been so provided in terms. The mere change of language in the revision of statutes by the omission of words is not significant of any change of legislative intention where such words were superfluous or might be implied by fair construction. (Endlich on Stat., sec. 378–383.)

We next inquire the meaning of the phrase "knit fabrics and all fabrics made on knitting machines or frames" as used in paragraph 392. Is it more or less specific than "wearing apparel"? "Knitting is the art of forming looped fabrics or textures with the use of needles and a single continuous thread." (Encyclopædia Britannica, vol. 14, page 127.)

A fabric is "that which is fabricated," and to fabricate is "to form by art and labor; to manufacture." (Webster's Dictionary.) The phrase "knitted fabrics" seems to be one of commercial designation, and if such be the case, or the phrase be one of more minute description, it must be held to predominate over descriptive words of a generic character. (Robertson *vs.* Salomon, 130 U. S.,
41 412; Arthur *vs.* Lahey, 96 U. S., 112.) In Spon's Encyclopædia of Manufactures (1882), volume 2, page 1186–1189, we find the history of "knitted fabrics, hosiery," given under that nomenclature at great length and showing the growth of this industry for the past two centuries and of knitting or hosiery machinery especially in the last fifty years. The word "fabric" is uniformly used there to designate not only socks and stockings, but shirts, drawers, and various other articles produced by the art of knitting, which may be called *as* hosiery as well as piece goods. Advertisements by the trade are seen every day in the public press and are produced before us of "wool, knit fabrics, comprising socks, stockings, gloves, mitts, jackets, Swiss ribbed vests, and drawers," etc. A number of witnesses also testified to the fact that the term under consideration is one of well-known commercial meaning in the trade. The following phrases have been held by the courts to have a commercial designation among traders and importers sufficient to fix their classification specifically as belonging to a named class of merchandise: "Silk laces" and "thread laces" (Arthur *vs.* Lahey, 96 U. S., 112); "Japan leather" (Morris *vs.* Arthur, 95 U. S., 144); "merino goods" (Greenleaf *vs.* Worthington, 26 Fed. Rep., 303).

Whether the descriptive name under consideration (paragraph 392) be a commercial designation or not, it is more narrow and specific than the common one of wearing apparel, where the use of the article determines the classification. It *ex vi termini*
42 withdraws knit fabrics or hosiery made on knitting frames or machines, as these fabrics are, of every kind from the category of clothing, ready-made, or wearing apparel, by the special provision made therefor in paragraph 392 of the tariff law of October 1, 1890.

The suggestion that the words knit fabrics derives color of meaning from the antecedent word "cloths" is without force. It is equally associated with the word "shawls," which is known to be

wearing apparel. The evidence before us shows that the percentage of knit fabrics which come from abroad, outside of hosiery—such as stockings, socks, gloves, shirts, and drawers, and other wearing apparel—is comparatively insignificant.

If the question under consideration were doubtful, we would be compelled, under established rules of construction, to give the benefit of that doubt to the importers.

We accordingly hold that the merchandise in question should have been classified as contended by the importers, under paragraph 392 and not paragraph 396 of the present tariff law.

The decision of the collector is reversed and he will proceed to reliquidate the entry in the manner and time prescribed by law.

The invoice and entry are herewith returned.

HENDERSON M. SOMERVILLE,
CHARLES H. HAM,
Board of U. S. Gen'l Appraisers.

Collector of customs, New York.

A true copy.
Attest:

J. R. LAKE,
Chief Clerk.

43 And for a certified statement of the facts involved in said matter, as ascertained by them, the said board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said board than such as are shown by said decision and other exhibits hereto attached.

HENDERSON M. SOMERVILLE,
CHARLES H. HAM,
GEORGE H. SHARPE,
Board of U. S. General Appraisers.

Endorsed: No. 374. U. S. circuit court, southern district of New York. In the matter of the application of the collector at New York for a review of the decision of the board of gen'l appraisers on merchandise imported by Arnold, Constable & Co. Return of record. Evidence and facts by board of U. S. general appraisers. U. S. circuit court. Filed May 7, 1891. John A. Shields, clerk.

44 In the Matter of the Protest 3152*a* of Arnold, Constable & Co. against the Decision of the Collector of Customs at the Port of New York as to the Rate and Amount of Duties Chargeable on Certain Knit Hosiery Imported per Alaska, Oct. 15, 1890. Suit No. 374.

The board of United States general appraisers, having heretofore made a return to the order of the circuit court in the above-mentioned case, do hereby make the following further or additional return by way of a finding of the facts involved in the case:

First. That the merchandise embraced in the protestant's invoice and made the subject of their protest are stockings, socks, undershirts, and drawers composed wholly or in part of wool or worsted.

Second. That said goods were made upon knitting machines or frames.

Third. That said stockings, socks, undershirts, and drawers are "knit fabrics."

Fourth. That the phrase "knit fabrics," as used in paragraph 392, Schedule K, act of October first, 1890, is one of commercial designation, and was such at the time of the passage of said act, and was then and is now understood in trade and commerce to include all articles which were knit, either by hand or on knitting machines or frames, whether completed or in the piece.

Fifth. That the phrase "knit fabrics" is also one of com-
45 mon knowledge, and is popularly known to be the kind of goods covered by the invoice and protest in this case.

Dated New York, March 12th, 1891.

HENDERSON M. SOMERVILLE,
CHARLES H. HAM,
WILBUR F. LUNT,
Board of U. S. Gen'l Appraisers.

Endorsed: No. 374. U. S. circuit court, southern district of New York. In the matter of the application of the collector of customs at N. Y. concerning merchandise imported by Arnold, Constable & Co., per "Alaska," Oct. 15, '90. Additional return of record, evidence, and facts by board of U. S. general appraisers. U. S. circuit court. Filed Mar. 13, 1891. John A. Shields, clerk.

46 United States Circuit Court for the Southern District of New York.

In the Matter of the Application of the Collector of Customs at New York for a Review of the Decision of the Board of General Appraisers as to the Rate and Amount of Duty on Certain Merchandise Imported by Arnold, Constable & Co., per "Alaska," October 13th, 1890.

To the honorable the circuit court of the United States for the southern district of New York:

Your petitioner, the collector of customs for the port and collection district of New York, on appeal in the above-entitled cause from the decision of the board of United States general appraisers, respectfully states that on the 7th of March, 1891, pursuant to an order of this honorable court, the said board of general appraisers made return to this court of the record and the evidence taken by them, together with a certified statement of the facts involved in the case and their decision therein.

Your petitioner now makes further application to this honorable court and prays for a reference of this case to one of the said board of general appraisers, as an officer of this court, to take and
47 return to this court such further evidence as may be offered by your petitioner touching the issue to be determined by

this court respecting the classification of the merchandise aforesaid and the rate of duty imposed thereon.

J. J. COUCH,
Special Deputy Collector.

Endorsed: No. 374. United States circuit court for the southern district of New York. In the matter of the application of the collector of customs at New York for a review of the decision of the general appraisers as to the rate and amount of duty on certain merchandise (knit goods) imported by Arnold, Constable & Co., per Alaska. Applications for order of reference. Edward Mitchell, United States attorney and attorney for petitioner, post-office building, New York city. U. S. circuit court. Filed Mar. 17, 1891. John A. Shields, clerk.

48 At a stated term of the United States circuit court for the southern district of New York, held in the United States court and post office building, in the city of New York, on the 17th day of March, A. D. 1891.

Present: Hon. E. Henry Lacombe, circuit judge.

In the Matter of the Application of the Collector of Customs at New York for a Review of the Decision of the Board of United States General Appraisers as to the Rate, etc., of Duty on Certain Merchandise Imported by Arnold, Constable & Co., per "Alaska," October 13th, 1890.

Upon reading and filing the application herein and upon motion of Edward Mitchell, United States attorney and attorney for the petitioner, it is—

Ordered that it be referred to Geo. H. Sharpe, Esq., one of the board of United States general appraisers, sitting at the port of New York, to take and return to this court such further evidence as may be offered in the above matter by the petitioner within sixty days hereafter.

E. HENRY LACOMBE,
Circuit Judge.

49 At a stated term of the United States circuit court for the southern district of New York, held in the U. S. court and post office building, in the city of New York, on the 26th day of March, 1891.

Present: Hon. E. Henry Lacombe, circuit judge.

In the Matter of the Application of the Collector of Customs at New York for a Review of the Decision of the Board of United States General Appraisers as to the Rate, etc., of Duty on Certain Merchandise Imported by Arnold, Constable & Co., per "Alaska," October 13th, 1890. No. 374.

Upon the return of the board of United States general appraisers in the above matter and upon the application and motion of W. B. Coughtry, attorney for above-named importers—

It is ordered that General Appraiser George H. Sharpe, the referee heretofore appointed by this court to take testimony on behalf of the petitioners in this proceeding, be, and he is hereby, instructed and directed to take in connection with said testimony such other testimony as may be offered and as may be relevant to the question at issue by the importers above mentioned.

E. HENRY LACOMBE.

Endorsed: 374. U. S. circuit court. Filed Mar. 26, 1891. John A. Shields, clerk.

50 United States Circuit Court, Southern District of New York.

In the Matter of the Application of the Collector of Customs of New York for a Review of the Decision of the Board of United States General Appraisers as to the Rate, etc., of Duty on Certain Merchandise Imported by Arnold, Constable & Co. per Alaska October 13, 1890. No. 374.

To the circuit court of the United States for the southern district of New York:

The undersigned, a general appraiser under the act of June 10, 1890, to whom it was referred by this honorable court by an order made March 17, 1891, to take further evidence in the above-entitled matter, do hereby return such further evidence taken by me pursuant to such order.

Dated April 4th, 1891.

GEORGE H. SHARPE,
U. S. General Appraiser.

51 United States Circuit Court, Southern District of New York.

In the Matter of the Application of the Collector of Customs at New York for a Review of the Decision of the Board of United States General Appraisers as to the Rate, etc., of Duty on Certain Merchandise Imported by Arnold, Constable & Co. per Alaska October 13, 1890. No. 374.

NEW YORK, *March* 24, 1891.

Testimony taken before George H. Sharpe, Esq., one of the board of general appraisers, as referee, in the above-entitled matter, pursuant to order of reference made by Judge Lacombe, of the circuit court, dated March 17, 1891.

Appearances: For the collector, Henry C. Platt, ass't U. S. attorney; for the importers, Wm. B. Coughtry and A. P. Ketchum.

52 CHARLES E. SPENCER, sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?

A. I am engaged in the manufacture of hosiery and underwear.

Q. And have been for how long?

A. Between 25 and 26 years last past.

Q. What is the name of your company?

A. The Norfolk & New Brunswick Hosiery Company.

Q. Where do they transact business?

A. Their factories are located at New Brunswick, New Jersey, and Norfolk, Conn. We transact business principally in New York city. We sell our goods all through the United States.

Q. And where is your headquarters in New York?

A. No. 57 White street.

Q. What class of goods do you manufacture?

A. We make knitted shirts and drawers, half hose, goods that are termed cut goods and goods that are termed full-fashioned goods.

Q. Are you familiar with the mode of manufacture of these articles?

A. I am, sir.

Q. Will you state how they are made?

A. I have exhibits with me of pieces of garments in various processes.

Q. Produce them. They will illustrate you testimony.

A. (Producing a box of samples.) If you please, we will show you how a shirt is made first. I also have the material here for a drawer, I think. What I am about to illustaate will be what are termed fashioned underwear. This piece (indicating) is made on a separate machine from the other pieces in the ordinary
53 practice, this being a straight piece of webbing, which is knitted continuously and is measured off to the proper length for a garment and cut off by shears or knives. There is enough here for about four, I should judge, of the size that this is intended for.

Q. That is knit in a continuous piece, is it?

A. Yes, sir.

Q. And cut off up to the required length?

A. Yes, sir; with the selvage edges, as you notice; what we term fashioned underwear, this body being straight. On another machine we make the sleeves, which are fashioned—that is, widened and narrowed—in some cases widened and some narrowed. There is a mark designating where they should be cut apart, this piece making one sleeve, this being the narrow portion at the wrist and this the wider portion at the shoulder.

Q. That is also a continuous piece?

A. Yes, sir. Where it is a double thread they break out a thread and leave a single one and where it is a single thread they usually chalk a mark. There are three pairs of sleeves.

Q. In one continuous piece?

A. Yes, sir.

The shirt fabric produced by the witness is offered in evidence and marked Exhibit A.

The sleeve fabric produced by the witness is offered in evidence and marked Exhibit B.

The WITNESS: Now, to proceed, there are made also, on another

machine, what are termed borders for the shirts, made in continuous pieces like this and cut apart by shears, and they are seamed or sewed by hand or machinery to the bottom of the shirt.
54 That looks narrow for a shirt, but you will observe that it stretches out to the normal position of a medium-sized shirt.

The border fabric produced by the witness is offered in evidence and marked Exhibit C.

Also we have the cuff which goes on the end of the sleeve, which is made on still another machine in continuous pieces and cut off.

Q. At the required length?

A. Yes, sir; it is designated by the machine. It is seamed or sewed by hand or machinery on the end of the sleeve to make a cuff.

The cuff fabric produced by the witness is produced in evidence and marked Exhibit D.

That is the knitted fabric that makes into a shirt.

Q. Those four separate pieces are afterwards made into one shirt?

A. Yes, sir.

Q. Are those different weaves or fabrics made on different machines or the same machine?

A. They are made on different machines.

Q. Will you explain how they are afterwards made into the completed article—the shirt?

A. Yes, sir. I would say that it is possible to make the straight pieces or body portion of the shirt on the sleeve machine by setting the machine wide at the shoulder, but, as machines are ordinarily constructed, it is not possible to make the sleeve portion on the machine that makes the straight portion. It is a machine of a cheaper character that makes the straight or body portion. As to assembling them together, it is done in some places by hand
55 very largely. Joining the bottoms of the shirt, the borders or the cuffs, to the other immediate portion is done in several ways. There are what we call in this country seamers, linkers, or loopers; they go by the three different names in different sections of the country. Where the work is run onto points and raveled down, two pieces together, the stitches which the operator holds on to are ravelled off, leaving but one row of stitches of the bottom of the shirt—for instance, the body portion, and of the top of the ribbed portion on these points. Then there is a needle perforation upon these points very much after the manner of a sewing machine, the principal difference being that the places for the needle to puncture are already prepared for the needle in the grooved points, whereas in the ordinary sewing machine the feed determines the portion that is punctured; that would illustrate the joining by machinery. There is a way of doing it by hand, but that is not very much in vogue in the ribbed portion—that is, joining tne ribbed to the regular portion. The seaming, the selvage portion of the shirt, the edges at the side and on the arm are done in much the same

manner, but in a good many cases by hand. That is where the hand-work comes in—that is, so far as assembling the pieces is concerned.

Q. Then, as I understand you, sometimes these parts are put together and sewed by hand and sometimes sewed by machinery?

A. Yes, sir.

Q. Now, with regard to the sleeves, how are the sleeves joined to the body of the shirt?

56 A. The selvage edge of the body portion is either placed on these point machines, as I have illustrated, or taken by the hand operator and the shoulder or wide part of the sleeve taken in like manner and either put on my machine or by the hand operator and sewed stitch for stitch in either case by a thread passing through. In the case of hand-work it is an overhand stitch, plain sewing, as we call it; in the case of the machine it is very much as I have designated for joining the ribs.

Q. After these several operations, what still remains to make the completed shirt?

A. I have a shirt completed here which I can illustrate by, perhaps. We have simply a band, you may say. We are minus a place for the wearer's head or throat, or place to get in it. We have both sides of that shirt looking very much like the back of it does now, without the opening in the top; just the same as that thing, in fact, barring the stitching. We have to cut this place for the head to go through and cut this down the proper distance, and in the case of a silk-front garment, as this is, there is a front previously prepared, made of entirely foreign material to the knit fabric, and is sewed on by the ordinary sewing machine; also the button-hole stay on the opposite piece. For a self garment—that is, a garment where the garment is not made of silk—but is of the same material, the silk band is absent. They are made a little differently and looped over. We also have this stitching around the neck, sometimes ornamental and sometimes for utility, both to be done by the sewing machine; stays to be put in by the hand, as you see

57 in all well-made goods entirely hand-work; made of galloon binding or something equivalent to that, and the shirt is all ready to put right on.

Q. The buttons have to be sewed on?

A. Yes, sir; button-holes previously made.

Q. Are those button-holes made by hand?

A. No, sir; I think not, ordinarily. Life is too short in this country to make button-holes by hand. Buttons are sewed on by machinery and by hand; the better class of goods by hand. I think, then, we have the shirt completed. There is an intermediate state of washing, which I suppose is not pertinent to this case. All shirts do not have this border.

Q. So that I understand you that the process of knitting does not make a completed shirt?

A. No, sir.

Q. The simple process of knitting?

A. No, sir.

Q. That only makes the original fabric out of which the shirt is made?

A. That is the idea; it gives you the making of a shirt, as the Irishmen say.

Q. It gives the foundation or fabric of a shirt?

A. Yes, sir.

The completed shirt produced by the witness is admitted in evidence and marked Exhibit E.

By Mr. COUGHTRY:

Q. Is that shirt, Exhibit E, made after the method you have described?

A. Yes, sir.

Q. How?

A. I have described two ways, the hand process of seaming and the machine process. The seaming is the machine process all the way through. There is some hand-work in the trimming, &c.

By Mr. PLATT:

58 Q. Now, as to the drawers; I suppose you are familiar with the manufacture of drawers as well as shirts?

A. Yes, sir; I have not a pair in the rough state here, but I can illustrate it just as readily by the finished drawer and sleeve. We have here the legs united. Drawers are made in two parts—two legs. This is an article (referring to drawers), the same as illustrated in the sleeve, made by widening and narrowing in some machines and by narrowing only in others. Where it is narrowed only they start from the wide part, run down, and cast off; start another leg and run down, seam the two together, and what I have said regarding seaming cuffs and joining cuffs applies to drawers. When it comes to the trimming we have a band which is prepared in anticipation of getting a drawer for it some day.

Q. That is a separate piece?

A. A separate piece. There are nine pieces to that band; that is an ordinary band, too; this is double; this is what we term a regular band. There are others called self bands. The differences are very trifling. This is prepared to meet the drawer as it comes along. The drawer is cut at the top to suit the sharp or yoke part of this band. Part of the garment is thrown away—cut off. It is sewed on by the ordinary sewing machine; the button-holes as before, buttons, silk stitching, suspended tapes attached by the sewing machine; eyelets worked, I should say, principally by machinery, but some may do it by hand; tapes also. That is made of five pieces of knit fabric. There are nine pieces besides the strips and button and band. The drawer is all ready to put on and wear.

59 Q. Those bands, as I understand you, are made separately without any regard to being applied to any particular pair of drawers?

A. Yes, sir.

Q. Kept in stock?

A. Yes, sir; made in advance. Ordinarily we work in a hurry in this country; we are ready for whatever comes to us and have to prepare for it.

Q. So that the knit fabric out of which the drawers are made is not a complete drawer?

A. By no means. In what is termed the self-band drawers the fabric only shows on the inside usually a single thickness, the knit fabric going to the extreme top. Some trim the other way, showing the band on the outside and the fabric at the top. The technical designations are self bands and regular bands; this is a regular band. The bindings also I did not mention, I think, in what I have enumerated.

Q. They are sewed on?

A. Yes, sir.

Q. So that the completed drawer is made not only by a process of of knitting, but by sewing?

A. Decidedly so, sir.

Q. The buttons are sewed onto the drawers?

A. Yes, sir; onto the band part.

The drawers produced by the witness are offered in evidence and marked Exhibit F.

The band produced by the witness is offered in evidence and marked Exhibit G.

Q. Now, with regard to the stockings and socks. How are they made?

A. There are several methods employed in making stockings. I have not any exhibits with me. There are several ways. I
60 don't know which to call the ordinary way. As we make them in our factory, we start at the top of the leg; me make principally what are called men's half hose; we start on what we term a header, making the leg and the heel strips and top of the foot in one piece; a separate machine is employed for the bottom or sole of the foot; fashioned, both of them; and a third machine for the ribbed top, as these ribs are shown here. They are all united, as we do it, by the seaming machine running on points. I recently saw a plant brought in from Chemnitz. It is on exhibition in Brooklyn. I saw it a week ago last Friday; that shows one of the foreign methods, if you wish it illustrated. I think it is used in this country, also, to some extent. The legs are made on one machine, starting at the hem. I saw this making ladies' stockings. The hem is turned on the machine and the leg fashioned down, making selvage edges, until it comes to the place for the heel, when it is run off entirely from that machine and transferred to a second machine which makes the heel strips only; again run off at the end of the heel strip and transferred to a third machine; and by transferring I mean that the stitches that were left by the needles of the former machine are run onto the latter to which the transference is made. On the last machine the instep is run on and also the selvages of the heel. This third machine is termed a footer, on which the foot

is fashioned. The stocking is then taken in a seaming or sewing machine. It is sewed or seamed from the hem at the top of the leg, all the way down the back of the leg, under the bottom of the heel strip, and up the bottom of the foot. It is termed the
61 split-foot or German and French method, a seam under the bottom of the foot. Those machines are on exhibition. The office is at 120 Franklin street. They are imported to this country for the purpose, I understand, of inducing American manufacturers to adopt them as an improved system. There is another way of making a half hose: Instead of putting the cuff on by the seaming or linking or looping machine, which are the same thing, it is run on the needles and the knitting started from the ribbed top. In any case there is the assembling of the parts and joining together by hand or machinery to make the stocking. The method I have just described, the Hilcher process, I think it is, or machine, involves the least amount of seaming—namely, just one continuous seam from the top of the hem of the stocking down the back of the leg, under the heal, and across under the bottom of the foot; also across the toe about an inch to make the toe complete; that is the least seaming I ever saw on a stocking, except what is termed the seamless stocking.

Q. Did you ever have anything to do with buying or selling such articles as undershirts, drawers, stockings, and half hose in your business?

A. Not much; no, sir. I am engaged in the manufacture principally. I have frequently met gentlemen in our store and talked with them.

Q. Have you been present when such goods have been bought and sold?

A. Yes, sir; repeatedly.

Q. And have heard and are familiar with the terms used in buying and selling such articles in the trade?

A. Yes, sir.

62 Q. Was there any difference in the meaning of the term "fabric" as used in trade and commerce in this country at the time of the passage of the tariff act of October 1, 1890, from its ordinary meaning?

A. I think not, sir.

Q. Does not the term "fabrics" cover a very large class and variety of goods other than knit goods?

A. Yes; decidedly so, I should say.

Q. Does it not cover virtually all dress goods that are sold by the piece, woven, knit, or otherwise?

A. I should say that "fabric" was confined to piece goods. That would be my definition of it; not as expressive of any finished garment.

Q. It refers to the cloth or other substance out of which garments are fashioned?

A. The texture, I think, "fabric" implies more than anything.

Q. Fabric is the texture?

A. The texture of which the article is composed.

Q. And in your experience it is confined to that and not to the completed article in trade?

A. Yes, sir.

Q. And in the common speech as well?

A. Yes, sir.

Q. To what use are such articles as those imported here, such as undershirts, drawers, hose, and stockings, put? What is their general use?

A. They are wearing apparel.

Q. Worn by men, women, and children?

A. Yes, sir; ready made; all ready to put on.

Q. Are not such articles as those imported in this suit commonly and commercially known and were they not so known at the time of the passage of the tariff act, October 1, 1890, as undercloth-
ing?

63 A. Yes, sir; undershirts and drawers. In the trade, as a matter of fact, we say shirts and drawers; sometimes undershirts. It stands for itself that it is an undershirt.

Q. And the exclusive use of all these articles is to be worn?

A. Wearing apparel; yes, sir. That *it* all we make them for and all that they are used for.

Q. All that they are ever used for?

A. Yes, sir.

Q. That is the design, the purpose, for which they are made?

A. That is what we manufacture them for.

Q. I call your attention to the common definition of "clothing" as found in Webster: "Garments in general; clothes; raiment; covering." Was there at the time of the passage of this tariff act of October 1, 1890, any other meaning in trade and commerce in this country of the word "clothing" than its ordinary meaning in every-day speech?

A. Not that I am aware of.

Q. Did these articles, such as are imported here, have some specific names in trade and commerce in this country on October 1, 1890, and prior thereto; for instance, such as drawers, undershirts, underwear, hosiery?

A. Yes, sir; knit underwear or knit shirts and drawers was the common designation and is still.

Q. The term "knit" as applied to those articles merely refers to their mode of manufacture, does it?

A. Yes, sir—that is, looped; that is in distinction to woven.

Q. Is there a difference, and, if so, what is it, between the word "fabrics" and the word "goods"?

A. Well, fabric, as I have already said, seems to me to be the texture of a thing, of which it is composed. We say a fine
64 fabric or coarse fabric, while the words "goods" may apply *fo* a great many things.

Q. Any kind of merchandise?

A. Any kind. This paper box is goods; a coat is goods, shoes are goods, and any sort of property.

It is conceded that the imported articles in suit are all completed articles.

Q. What do you understand in common speech and in trade and commerce if there is no difference—as you say there is not—to be the meaning of the term "wearing apparel," October 1, 1890, and prior thereto?

A. I should say clothing to be worn on the person.

Q. In the course of your experience have you been more or less in wholesale establishments dealing in this class of goods?

A. Yes, sir, frequently, but as a visitor more than otherwise.

Q. Did you ever hear or see them marked or advertised prior to October 1, 1890, as "knit fabrics"?

A. No, sir.

Counsel for the importers states that, as he has not understood up to this time that he had a right to object to testimony, he desires to reserve his objections to all the testimony which has preceded.

Cross-examination by Mr. COUGHTRY:

Q. Do I understand from your testimony that your familiarity and knowledge of these goods has been almost exclusively derived from the manufacture?

A. No, sir; not exclusively.

Q. You have had experience from the sales of goods in the market?

A. In the store I have been familiar with buyers and sellers of goods, but not as a buyer or seller.

65 Q. You mean you have been present casually while sales were taking place?

A. Yes, sir.

Q. You know nothing of the market as a buyer or seller, then, excepting what you have incidentally heard; is that so?

A. No, sir; I keep pretty well posted in the market.

Q. Have you sold goods?

A. No, sir; I am not a salesman.

Q. How do you get your knowledge?

A. By the current reports.

Q. Where do those reports come from?

A. From our agents and the trade papers.

Q. Indirectly?

A. I should say directly.

Q. You do not meet the people who come to buy these goods?

A. Not very generally; no, sir.

Q. There are others in your concern who are appointed to deal with them?

A. Yes, sir; salesmen.

Q. Then, practically, it comes down to this: that your knowledge in regard to the sales of these goods, the custom as to buying and selling, is confined to what you have heard from those who buy and sell goods for your concern, and trade reports and other incidental methods; is that so?

A. The reports to our factory. I think you restrict me somewhat in my knowledge. I am supposed to know just what the market is on every line of our goods and follow it closely and watch sales and know the reason why they do not sell and why they do.

Q. You have spoken of your familiarity with the methods of manufacture of these goods and you have shown a number of samples. Can these pieces which you have produced be used
66 for any other purpose than those for which they were intended when they were put in the machine at first?

Objected to as immaterial.

A. I would not like to say positively no. They probably will not be used, because it is economy to use them for this purpose only, as they are made after a preconceived design; but anything of a knitted character with welt seams, cut goods could be cut from these pieces, but not economically. As a matter of fact, they would not be used for anything except that for which they were intended to be used when they were put in the machine in the practical manufacture, but it is not impossible to make another class of goods out of them of a different size.

Q. What can you make of Exhibit G excepting a band of a pair of drawers—profitably, I mean?

A. Nothing profitably.

Q. That strip that you showed us for the sleeve of a shirt, for what could it be used excepting the sleeve of a shirt?

A. It could be used for sleeves of what we call a cut shirt by cutting it down if you wanted a smaller size. The question was a very broad one, it seems to me. You asked if it were possible. There is a possibility.

Q. Of course, I mean possible with a profitable result in commerce. You would not be apt to do it in your factory for the purpose of making a profit?

A. No; I would make them and use them for just what I have shown.

67 Q. You say these goods undergo before they are made into a—what was the term?

A. Finished garment.

Q. They undergo a process of assemblage, as you might term it?

A. Yes, sir.

Q. What is it—finishing or trimming?

A. Seaming and cutting.

Q. Is that all done in the same factory or is it done by other people?

Objected to as immaterial.

A. It is ordinarily in the same factory in this country.

Q. In your factory it is always done in the same place?

A. In the same mill; in the same concern.

Q. That is, you receive practically the wool and you turn out a finished garment?

A. That is it.

Q. All in your own place?

A. Yes, sir.

Q. Without sending out the parts to be assembled elsewhere?

A. Yes, sir.

Q. You have spoken of knit fabrics. Do you know of any other knit fabrics excepting those that you have explained to us and have shown to us—that is, shirts, drawers, and stockings?

A. Yes, sir.

Q. Will you specify them?

A. There is one knit fabric which I should say would cover the definition that the gentleman explained at your right. It is denominated Jersey cloth often; that is one of the names for it. It comes in the piece—a continuous length. He illustrated it very fully; I think better than I can.

Q. Any other sample?

A. That is, commercially you mean? I know in factories how we cut out goods. Do you want to go into that?

68 Q. Yes; kindly tell us about the Jersey cloth.

A. We do not manufacture that class of goods in our factory. It is the manufacture of other parties, but is made and finished in the piece much after the manner of broadcloth. It is imported here and it is made here, both. I have seen it made and I have seen garments made from it. I never have dealt in it and never have manufactured it.

Q. Does Jersey cloth come in a long strip rolled up like ordinary cloth?

A. I am not familiar with the package form that it comes in. It is in the piece.

Q. A long narrow piece?

A. Yes, sir. It is double texture usually, sometimes single.

Q. The cloth when it comes in that shape is of an uniform width, is it not?

A. Substantially so, yes.

Q. That is, it is not fashioned, not curved out and in, or anything like that, but is supposed to be and intended to be of the same width throughout?

A. Yes, sir.

Q. Can you tell us about any other things that you would include as knit fabrics?

A. That is the only thing that I think of at this moment that gets into use, sale, in the market, for delivery. There may be other things, but I am not familiar with them.

Q. Then your knowledge in regard to these affairs is strictly confined to the making of shirts, stockings, and drawers?

A. Yes, sir; my practical knowledge.

Q. You have heard incidentally about this Jersey cloth?

A. No, sir; I beg pardon. I have seen it made repeatedly in this country and in Canada, and have seen the finished article in stores.

69 Q. That is what I meant?

A. I am familiar in what you might call a general way

with the process of manufacture, but never have made it in our own factory.

Q. In regard to the other articles, you don't know anything about them?

A. Only the general knowledge which any one gets of knit goods, being in the whole range. We get various articles and examine them. I have given you in the sample an illustration of my specialty, as you may say.

By Mr. KETCHUM:

Q. Have you ever seen machines working in the production of such articles as you have shown here to-day?

A. These articles?

Q. Yes.

A. Yes, sir; I have operated them frequently.

Q. Have you any machine at your establishment which makes the completed article in one piece?

A. Not the shirts and drawers; no, sir; we have not anything that makes any completed article in one piece.

Q. Do you ever sell these productions, such as you have shown us here to-day, in the market?

A. Do I personally sell them?

Q. Are they sold by your establishment?

A. Yes, sir.

Q. In portions?

A. The pieces.

Q. The pieces by themselves?

A. Only in a very limited way; people come in, farmers and others, and get damaged pieces. They get quite dextrous in making the shirts and darning up the holes and they can make a very good job of it.

Q. That is not in trade and commerce?

A. No, sir; only locally. You will find it around every knitting factory.

70 Q. They are a wise people?

A. Yes; they are very provident.

Q. And as a matter of trade and commerce these articles are never sold in this partial piece form?

A. Not that I am aware of; no, sir.

Q. Have you had much knowledge of the application of the tariff to the goods which you manufacture?

Objected to as immaterial.

Q. Do you know how the articles which you manufacture were assessed for duty under the tariff of 1883?

Objected to.

A. I could not tell from memory. I am familiar with that; have studied it from time to time in its changes, but from recollection I would not want to recall just what it was.

Q. You have spoken of texture. You distinguish between the

knit article and the woven article, and I understand you to say that the texture meant the method by which the article came to exist. Do these shirts that you make and sell come to exist by means of the weaving process or by means of the knitting process?

A. I don't understand that I made that exact statement. I would like to have my answer that embodied it referred to. I think the statement is more condensed than mine.

Q. Are the shirts which you sell, made up of these pieces that you have referred to here, woven?

A. Only the trimming part; the main body part is knitted.

Q. The woven part refers to that little loop, does it not?

A. I understand you in the woven part of the shirt?

71 Q. The band.

A. The band or trimming; yes, those are woven.

Q. Won't you show us just what it is?

A. This is woven; this is the band of the drawer.

Q. The texture of the body of the material is knit?

A. Yes, sir.

By Mr. COUGHTRY:

Q. The drawers that you have shown us—is that a fair sample of all the drawers that are sold in the market—that is, do they consist of a part knit and a part woven like this?

A. Yes, sir.

Q. All the goods that are sold in the New York market are made up in this way—that is, with a knit body and a woven band?

A. Substantially so. I know of no others. It is a pretty large market, and if there are any I don't know it.

Q. Those which are made by your company are all made this way?

A. Yes, sir—that is, I have described the difference between the self and regular bands, barring that.

Q. What I mean is the band is woven?

A. Yes, sir.

Q. Now, about imported goods; do you know anything about those?

A. I have seen them frequently.

Q. Are they made in this way as a rule?

A. Yes, sir.

Q. What experience or knowledge have you to that effect?

A. I have frequently had imported samples to work from and to examine thoroughly.

Q. Do you know anything of the bulk of the goods, not samples selected, but of the majority of the goods which are imported

72 in this country, whether they are made in that way or not?

A. Yes; that way and with self band. Some seasons this band is more popular, and other seasons the self band seems to be most popular.

Q. That is, with the woven band?

A. Yes, sir; in both cases.

Q. You think from your knowledge you are qualified to make that statement?

A. Yes, sir.

Q. You were speaking of wearing apparel. Was your definition anything more than such as was derived from your personal acquaintance with the wearing of goods—that is, have you ever had any experience in buying and selling goods that were worn on the person excepting these goods?

A. That is all; only what I wear on my own person. I have the privilege of buying them. I stated in a previous answer that I was familiar with the methods of buying and selling and in contact with those who did sell, but was not a buyer or seller by profession, or substantially so.

Q. That is, of any kind of goods?

A. Yes, sir.

By Mr. KETCHUM:

Q. I understand that you have described these articles marked as exhibits as knitted fabrics?

A. Exhibit A I would put as a fabric of which the garment is composed, and we have the completed garment.

Redirect examination by Mr. PLATT:

Q. You say that these articles are assembled and finished at your place by a different class of employees. Are they all finished up by the knitters?

A. No, sir. The knitters knit them, and then they are passed on to the seamers or linkers or loopers, as I have explained
73 heretofore, and after going through the washing process come to the finishers, who put on the trimmings and make the necessary additions to the garment, buttons and button-holes, binding, bands, silk stitching, ornamental and otherwise, stays, and inspect and mend them and send them forward to the packers, who assort them and stamp them, value them, put them in boxes, paper them, put them in cases, and they are ready for shipment to any part of the country.

Q. These different processes besides knitting through which these articles go before they come into the completed article are all done at your place as a matter of convenience?

A. Yes, sir. In old times, as we call it, we used to send them out around the country. Latterly we have preferred to keep them under our own roof. We know where they are then when we want them.

Q. I show you some samples of stockinet and ask you whether you are familiar with that class of articles or have seen it or are able to state whether that is a woven or knit article (handing witness a sample).

A. There are nine samples here, and they are all knitted.

Q. And that is a well-known article of trade and commerce in this country—was at the time of the passage of the tariff act of October 1, 1890?

A. Yes, sir.

Q. Bought and sold by the yard, in the piece?

A. Yes, sir; and corresponds to what I would call a light-weight Jersey cloth. Jersey cloth covers a great range, light and very heavy.

Q. This is what is properly called a knit fabric?

A. Yes, sir; most assuredly.

74 The samples of stockinet referred to are offered in evidence and marked Exhibit H.

Q. This fabric, marked Exhibit A in that shape, within your experience, has not that been bought and sold for the lining of shoes?

A. Yes, sir; but not exactly this selvage. There is a tubular form which is a much more rapid process of making, and it is now bought and sold for lining, but it does not come in the same category, I should say, as this. This is a selvage, and it would not be profitable to use it for that purpose.

Q. But that is knitted goods, isn't it, that is sold for that purpose?

A. Yes, sir; knit goods. Rubber factories use it very largely, and other purposes.

Q. It is sold for the purpose of lining rubbers?

A. Yes, sir; and for dress shields it is a very large factor In fact, there are fabrics knitted like those shown of Dr. Jaeger's that are very popular for dress shields, corresponding with those that you have introduced.

Q. That is, in the piece, and sold by the yard?

A. By the yard.

75 EDWARD H. DAVISON, sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?

A. I am secretary and superintendent of the American Hosiery Company, New Britain, Connecticut.

Q. How long have you been engaged in that business?

A. 22 years.

Q. You have had a large experience in the manufacture and sale of shirts, drawers, stockings, and hose?

A. Yes, sir.

Q. Will you describe the process of the manufacture of undershirts?

A. Undershirts are manufactured in a great variety of qualities and kinds and in a great variety of weights. The American Hosiery Company make goods in a way similar to that described by Mr. Spencer, and also by other processes. The bodies are sometimes made straight in this way, and others are shaped, the shaping or fashioning being done in some cases on the knitting machine during the progress of the knitting. In other cases the shaping and fashioning is done by means of tailor's shears, the garment

being cut to the proper size and shape by shears, and then made up by seaming either on the sewing machine or by hand in a variety of ways, according to the grade and quality of the work to be made.

Q. Is the same thing true of the drawers and stockings?

A. Yes, sir; the drawers are shaped and made in the same way. Stockings are also made in the same way, in part by shaping on the machines, and oftentimes by the use of shears; more commonly
76 now by shaping, although some portions of stockings are still made by cutting.

Q. What other processes than knitting are necessary in the manufacture of drawers and undershirts to make the completed article?

A. In the case of full-fashioned goods the borders and ribs for the cuffs of the shirts and ankles of the drawers have to be attached by a seaming process, looping process. In other cases the seaming is done on sewing machines, like that of ordinary garments that are cut from the fabric or cloth. After the seaming they go through the pressing and preparatory processes for the finishing; there the shirts are cut to the proper shape for the neck and bosom, in the case of men's shirts and ladies' vests; and drawers are also cut in the proper shape to conform to the size of the wearer at the hip, and for the opening down the front. The bands are then applied on the drawers, and in the case of the self bands the facings which have previously been cut to the proper shape are applied by a sewing machine. The button-holes are then made, the buttons are sewed on, the tapes and lacings are applied, and the drawer is ready for the packing-room.

Q. Have you any samples with you of cut goods? Are your goods cut goods?

A. We make cut goods and fashioned goods. I have brought no samples of the finished goods.

Q. What are the bands made of that go on these drawers?

A. Of a great variety of material; usually, in fact always, of a woven fabric.

Q. So that the completed drawer is made out of partly knit and partly woven fabric?

77 A. Yes, sir; that also applies to shirts.

Q. Are not shirts and drawers, particularly in the trade, called vests and pants?

A. Almost invariably, when referring to ladies' and children's goods.

Q. Called vests and pants?

A. Vests and pants; so labelled; children's goods particularly.

Q Has your company a headquarters here in New York?

A. Yes, sir.

Q. Where is it?

A. 110 Franklin street.

Q. What experience have you had in the buying or selling of goods of this character?

A. I buy the materials of which the goods are made—that is, the woven materials for the finishing room, and have general oversight of the sales and visit our customers.

Q. Do you sell any of the completed goods?

A. Yes; I have done so.

Q. Have you been present when such goods have been bought and sold in the market prior to October 1, 1890?

A. Yes; frequently.

Q. And are familiar with the terms used in the trade in respect to such goods?

A. Yes, sir.

Q. Have been for how many years?

A. Have been for 27 years. Six years before I was connected with the American Hosiery Company as superintendent I was salesman of similar goods.

Q. Of goods such as are described here as the importer's goods, drawers, undershirts, and stockings?

Objected to. Question withdrawn.

78 Q. Were you acquainted, prior to October 1, 1890, with stockings, socks, undershirts, and drawers composed wholly or in part of wool or worsted as known in the trade and commerce of this country?

A. Yes, sir; I was.

Q. Had they, prior to October 1, 1890, any trade name other than stockings, socks, undershirts, and drawers; if so, what?

A. Do you mean general or specific?

Q. In the trade?

A. In the trade they were called underclothing and underwear; more commonly underclothing and underwear.

Q. That was the trade designation?

A. Yes, sir.

Q. The term "stockings," "socks," "undershirts," and "drawers" were specific designations of underclothing or underwear in the trade?

A. Yes, sir.

Q. And in common speech as well?

A. Yes, sir.

Q. In the buying or selling of such articles, stockings, socks, undershirts, and drawers composed wholly or in part of wool or worsted prior to October 1, 1890, was there any trade designation given to those articles in the trade and commerce of this country as knit fabrics?

A. Not to my knowledge.

Q. Did you ever hear of a transaction where stockings, socks, undershirts or drawers were billed or sold, bought or sold in this country prior to October 1, 1890, as knit fabrics by that name?

A. I never did.

Q. I show you Exhibit 8 and ask you whether you have seen or known of articles of that character in trade and commerce in this country prior to October 1, 1890?

A. Yes, sir; I have seen a great variety of goods similar to those in Exhibit H.

79 Q. Are they woven or knit?

A. These are all knit.

Q. Were they bought and sold by the yard and in the piece in the commerce of this country prior to October 1, 1890?

A. Yes, sir; very generally, before then and at the present time. I have some samples of a similar character. For quite a number of years it has been a growing business in cloths that are manufactured on knitting machines, a regular loop fabric. They have in a great many instances taken the place of other woolen cloth for the manufacturing of clothing not only for underwear but for outside garments—for gentlemen's coats and suits, and particularly for ladies' coatings. Our concern have frequently had their attention called to this department of the trade and have had samples sent to us from builders of the machines in foreign countries and also in this country; and a great mant of the goods produced on these machines, when seen in the stores, would be taken for a woven fabric by one not familiar with their production. In fact, in visiting a store this morning I found the salesman behind the counter was sure they were woven goods until I called his attention to the fact that they had no selvage, by raveling out some of them. He could hardly admit that they were not woven. I have a sample of those goods, made for gentlemen's coatings.

Q. Were th*ses* articles dealt in in this country as an article of commerce prior to October 1, 1890?

A. They were.

Q. How many samples have you here?

A. I have five.

Q. What do you call those?

80 A. I should call them samples of knitted fabrics. I have a larger sample which I purchased at one of the stores here this morning which shows a little different variety of the goods, which I could also leave with you if it would be of any use.

Q. Is this a knitted cloth or fabric?

A. It is, sir.

The five small samples produced by the witness are offered in evidence and marked Exhibit K.

I would say that I have in addition to this a sample which I have borrowed. I have a package of samples which I have borrowed from a wholesale house.

Q. What house is that?

A. I have the name here. I prefer not to mention it.

The piece last produced by the witness is offered in evidence and marked Exhibit L.

Q. In addition to L you produce how many samples?

A. I produce six samples, each of them representing a different quality of wool—knit fabric.

Q. What are they used for?

A. These are used for coatings and cloakings, ladies' cloaks and children's suits, outside garments of all descriptions, in a great variety of weights and colors and qualities.

Q. And were known in this market as an article of commerce prior to October 1, 1890?

A. They were, sir.

Q. So that, as I understand you, at the time of the passage of the tariff act, October 1, 1890, and prior thereto, there was a large variety of knit fabrics known in the trade and commerce of this country other than underwear?

A. Yes, sir. I have some other samples of goods that were made at our own mill (producing a sample).

81 Q. What do you call this sample produced?

A. This is a sample of knitted fabric similar to that which is shown in Exhibit H. It is an article of merchandise found in most of the stores and advertised; sold by the yard.

Q. In the piece?

A. In the piece.

Q. That article was known prior to the passage of the tariff act, October 1, 1890, as an article of commerce in this country?

A. Yes, sir.

Q. As a knit fabric?

A. Yes, sir.

The sample produced by the witness is offered in evidence and marked Exhibit M.

Q. And that is other and different than the articles in suit here?

A. Yes, sir. Here is another similar quality, the material of which underclothing is made up before it is cut or shaped. That is the shape in which it comes from the knitting machinery (producing a sample).

Q. Was this article that you now hand me prior to October 1, 1890, bought and sold in the commerce of this country in that form and shape?

A. Many of the dry-goods stores kept that article for underclothing in the name of stockinet, preferring to buy the material and manufacture their own garments rather than to buy those that were ready-made, being able to get any shape or style that they might want.

Q. And this is not a made-up or completed undershirt, drawer, or stocking or hose?

A. No, sir.

The sample produced by the witness is offered in evidence and marked Exhibit N.

Cross-examination.

By Mr. COUGHTRY:

82 Q. You are the secretary of the American Hosiery Company?

A. Yes, sir.

Q. And you pass most of your time at New Britain or in New York?

A. Most of it at New Britain. I come to New York frequently.

Q. For instance, how often?

A. I don't know. I have been down twice within two weeks. I come down when occasion requires. Sometimes the men here come up to the factory.

Q. Has the company an agency in New York for the sale of the goods?

A. They have their own warehouse and their own office here.

Q. This is is the main office?

A. Yes, sir.

Q. And all the sales are made through the New York office?

A. Yes, sir; the sales are made here, but reported every morning to the office in New Britain.

Q. Do you sell the goods yourself or is that done at the New York office by the officials in charge?

A. I often meet buyers, if I happen to be in New York, and call on them at their own places of business.

Q. But it is not your business to sell goods?

A. No, sir; not personally to sell them. We have regular salesmen. I have my share in it.

Q. This is quite a large company, is it not?

A. Yes, sir.

Q. Who is the president of the company?

A. Mr. John B. Talcott, of New Britain.

Q. And the vice-president?

A. There is no such office. There is no vice-president.

Q. You have shown quite a variety of goods here. I am
83 speaking now of the exhibits of cloths like Exhibit K. Are cloths similar to this imported?

A. They are, sir.

Q. In large quantities?

A. I was so informed this morning.

Q. In large quantities?

A. Yes, sir; in large quantities. I found some of the goods this morning and was going to buy a few yards to bring here, but they charged such a price that I did not. I took the number of it. The salesman supposed they were woven goods.

Q. Who are these imported by?

A. The goods I saw at Arnold & Constable's this morning, their salesman did not know of it.

Q. Do you know that Arnold, Constable & Co. deal in domestic goods as well as imported?

A. I do, sir.

Q. So that the fact that the goods were procured there is no evidence that they were imported goods?

A. I took the word of the salesman. He said they were West of England cloth.

Q. Did you ever hear a salesman make a misstatement?

Objected to.

Q. Can you tell by examining these goods whether they are imported or domestic?

A. I could, sir.

Q. Which are they?

A. I recognize these samples as those which were sent to the company by the manufacturer of the machinery for the making of the goods. I saw the same goods in Chemnitz this last summer, and the machine on which they were made in Germany.

Q. So that you are satisfied that these are imported goods and not domestic?

A. Yes, sir; I am sure of that.

Q. Now, with regard to these other goods. Are these im-
84 ported or domestic (showing witness Exhibit L)?

A. I think it is a domestic article. I might say in this connection that I saw a great many of these machines when I was abroad last summer and was told that during the years, I think about four or five years ago, when there was a large demand for knit fabrics of this kind in this country, they were kept running twenty-two hours in a day, and I saw a gentleman this morning who was formerly in business there who told me that he sent most of his productions to this country.

Q. Goods similar to this?

A. Yes, sir.

Q. How long ago was that?

A. Four or five years ago.

Q. But you have not heard of any being recently brought over?

A. No, sir.

Q. Now, these goods that are here (referring to the borrowed goods)?

A. I have not offered that as an exhibit. I merely made reference to it.

Q. Referring to Exhibit M, do you know whether these are imported in any quantity?

A. Referring to Jaeger's catalogue, which has been placed in evidence, I find that these goods are enlisted in the catalogue in ten different widths in six different qualities and each of them at a different price per yard. I find that this concern has agencies in most of the principal cities—in all the principal cities of the country.

Q. But still you do not know what quantities they import in that state?

A. No, sir; I do not.

Q. You have given your opinion in regard to the goods
85 and the terms by which they are presumed to be known. That is derived from your experience with the mills of the American Hosiery Company and other manufactories rather more than your acquaintance with the market, with buying and selling, is it not?

A. No, sir; I should say not. In speaking of the goods at the mill I am more familiar with them by the technical terms in which they are mentioned about the factory. In speaking of these goods as underwear and cloth and shirts and drawers I am governed by what I know of the general use of the commercial terms by which they are known in the trade.

Q. You are not a manufacturer—that is, you do not make these up yourself?

A. I can run any machine in the factory.

Q. But do you?

A. I don't understand what you mean by the word.

Q. You are the secretary of the company—is it part of your duty to make these goods as superintendent directly?

A. I am the superintendent of the mill and have charge of all the details of the manufacture. I am nominally the secretary. It might be supposed that the office of secretary would imply that I spent my time in the office of the company upon its books and accounts. I have not made a mark on the books of the company, excepting to sign a paper or certificate, in sixteen years. I spend all my time about the mill.

Q. Then your knowledge is that of a manufacturer?

A. Yes, sir.

Q. And not as a salesman in the market?

A. I have knowledge of all the details of the manufacture
86 and also of the sale and distribution of the goods. All those come under my supervision.

By Mr. KETCHUM:

Q. For what purposes can these various exhibits which have been introduced here during your examination be used? First, for example, the articles represented in Exhibit K; for what purpose can they be used?

A. You mean cloth like that?

Q. Yes; cloth represented by those samples.

A. For a great variety of clothing.

Q. Will you describe what? Pantaloons, vestings, and coats?

A. Coats and pants. I have another exhibit which I had forgotten (producing a sample). That could be used for gentlemen's suits and children's clothing and ladies' dresses and outside garments; in fact, knitted fabrics are now used for a great many purposes.

Q. As to Exhibit L, for what purposes can such cloth as that be used?

A. They are intended for coatings.

Q. And this Exhibit M, for what purpose is that made?

A. For underclothing in general.

Q. That is, shirts, drawers, socks, and stockings?

A. Yes, sir; drawers, night-shirts, and used very generally for négligé shirts, outside shirts.

Q. They are then used for outside purposes as well as inside purposes?

A. Yes, sir; but in different colors. I have, in addition to the other exhibits, pants and coats (producing samples); they can be put in evidence if desired.

Adjourned to Wednesday, March 25, 1891, at 11 a. m.

87 Hearing resumed March 25, 1891.

Counsel for importers produces and offers in evidence 12 original samples which were put in evidence before the board of general appraisers in this case, counsel for the collector conceding identity of the exhibits. They are marked as follows:

Shirt, marked Exhibit 1.
Light drawers, marked Exhibit 2.
Black drawers, marked Exhibit 3.
Drab stockings, marked Exhibit 4.
Black stockings, marked Exhibit 5.
Drab socks, marked Exhibit 6.
Black socks, marked Exhibit 7.
Brown socks, marked Exhibit 8.
Brown socks, marked Exhibit 9.
Black stockings, marked Exhibit 10.
Children's three-quarter hose, marked Exhibit 11.
Union suits, marked Exhibit 12.

EDWARD H. DAVISON recalled.

By Mr. PLATT:

Q. Have you the coat and pants which were made out of this linen fabric present with you here in court?

A. Yes, sir.

Q. Please produce them.

The witness produces coat and pants, which are offered in evidence and marked Exhibits O and P.

Q. Have you any other samples of linen fabrics with you besides those that you produced yesterday?

A. I have one other sample (producing sample). This is
88 a sample similar to the goods to which I referred in my testimony of yesterday as being an article of general merchandise for sale at most retail stores.

Q. Also dealt in among jobbers and wholesale dealers, I suppose?

A. Yes, sir.

Q. Prior to October 1, 1890?

A. Yes, sir.

Q. Will you state the mode of manufacture of that article, if you know?

A. This article is knit upon the spring needle circular machine, and after the knitting process it goes through the fulling or felting process, as ordinary woolen cloths, and is then opened at the side. You will notice there are no selvages to this piece, showing the marks where it was cut, but at the corner at which I have clipped a hole I have raveled some of the threads, showing that it is a knit fabric, with neither warp nor woof.

Q. Is that article sold by the piece and by the yard?

A. It is sold by the yard; this piece was sold by the yard; it is the article to which I referred in my testimony yesterday; I saw it at Arnold, Constable & Co.'s.

Q. To what uses is that fabric and similar knit fabrics put?

A. Suiting, clothing, outside garments, coats, vests, and pants. I have a coat myself, a top coat, made from the same fabric.

Q. Does it closely resemble a woven fabric?

A. Very closely; most people would suppose it was a woven fabric with warp and woof; in fact, the clerk in the store supposed it was made in that way.

The sample last produced by the witness is offered in evidence and marked Exhibit Q.

89 Q. Do you know under what trade name goods of that character were bought and sold prior to 1881 in the markets of this country?

A. Generally regarded as cloths, I think; in the cloth department; knit cloth.

Q. How many different varieties of knit fabrics or cloths were on the market prior to October 1, 1890, in the trade and commerce of this country?

A. Composed of wool?

Q. Composed of wool or worsted.

A. It would be rather difficult to answer that question, except in a very general way. There is a very extensive variety of goods for a great many purposes in the market. They are largely used for the linings of rubber shoes and arctic shoes and rubber boots, and with a back thread for coatings and cloakings and plushes; you get plush effects on the knitting machine.

Q. Do you know an article in trade and commerce of the name of Terry cloth, made on a knitting machine?

A. Yes, sir.

Q. Sold by the yard?

A. Yes, sir.

Q. Will you describe that fabric?

A. That is knit by the introduction of an extra thread, an extra wheel on the circular machine; and we also get a twilled effect, similar to a tweed. There has been an almost endless modification of the knitting machine producing different effects and fabrics of various kinds.

Q. In many of the knitted cloths or fabrics as known in trade and commerce in this country prior to October 1, 1890, is it easy for an ordinary person to distinguish between woven cloth and knitted cloth?

90 A. Many of them; it is not easy to distinguish them, particularly those that have been through the fulling mill.

Q. You have spoken of the various processes of making knitted underwear, shirts and drawers. Can you tell, from your experience as a manufacturer, what proportion of labor in making such completed articles is necessary to be put upon them beyond the knitting of the original fabric?

Mr. COUGHTRY: I would ask whether that relates to all of these goods or to which part of them.

Mr. PLATT: I mean now generally. I will get the particular kind of goods afterwards.

A. That would depend very much, of course, upon the style in which the garments would be finished; but, taking the average run of knit underwear, shirts and drawers, I should say that the expenses of seaming, crocheting, and making up, including the materials that are applied in the finishing room, the facings, silk fronts, buttons, and the labor required in the finishing room, that the knitting would be about one-fifth of the total amount. In some cases very much less than one-fifth, but a fair average, I should judge, would be about one-fifth.

Q. So that in the regular made goods the cost of the process of knitting is about one-fifth?

A. Yes, sir; the knitting machines at present in use in most of the factories of this country and in Europe are automatic machines and a single operator can attend a number of looms. Many of these looms have a good many divisions, so that as regards the
91 simple process of knitting the expense is comparatively small.

Q. And in material and labor four-fifths of the entire product would represent things other than the mere cost of knitting?

A. The mere cost of knitting. I wish to be understood that in speaking of the knitting I refer simply to the production of the knitted garment, the yarn having previously been made. I am not counting the cost of the yarn or the cost of the material.

Mr. KETCHUM: The witness has grouped among the four-fifths the cost of all the materials, silk, sewing tape, and so on; but in connection with the one-fifth he has taken in simply the labor of the knitting process.

Mr. PLATT: We all understand that. His testimony is clear.

The WITNESS: The materials that are applied in the finishing room; not the materials of which the garments are made.

Mr. KETCHUM: Your question related to labor, you remember, Mr. Platt?

Mr. PLATT: I recollect that. What I am trying to get at is how much the mere labor of knitting represents in the manufacture of the completed garment and how much there is besides that.

The WITNESS: I so understand the question.

Q. Which are the more expensive to make, the knit goods or the other goods, what you call the regular make?

A. As regards the knitting, the full fashioned or regular made goods are more expensive to make. In regard to finish there
92 would be but little difference, provided both were finished in the same style.

Q. I show you Importers Exhibit No. 1, a shirt, and ask you to look at that and state if you know the method of its manufacture and the materials which enter into it.

A. This shirt was knit similarly to the process described by Mr. Spencer in his testimony of yesterday, with the exception that the

sleeves are both narrowed instead of being widened, and that the sleeves were knitted into the garment instead of being seamed or crocheted in or looped in as described by him. The cuffs are applied in the manner described by Mr. Spencer.

Q. How is that?

A. Being sewed on a separate machine. The cuff has been knit on a separate machine with two sets of needles, whereas the body of the shirt and the sleeves is the ordinary flat-stitch machine.

Q. The cuff has been sewed on it, has it?

A. Yes, sir. The shirt border is also made in the manner described by Mr. Spencer and applied in the way described. The shirt has been seamed by hand, as is the case with most of the goods made by Messrs. Cartwright & Warner, whose stamp the shirt bears. The finishing of the garment has been done in the general way, in the same manner described by Mr. Spencer, an opening for the neck being first cut, also the opening in front for the bosom or facings. The cross-stitching has been done by hand. The woven facings and button stays have also been applied by means of a sewing machine. The buttons are sewed on by hand.

Q. Then that shirt is not knitted all in one piece complete?

93 A. No, sir; it would be impossible to knit that shirt on a single machine.

Q. And it is made out of several different fabrics, is it?

A. Yes, sir.

Q. Part woven?

A. Part woven.

Q. Part knitted?

A. Part knitted.

Q. And other processes have been applied to it besides knitting?

A. Yes, sir.

Q. Now, we will take the blue drawers, Importers' Exhibit No. 2. Can you tell us how they were made and what materials and labor entered into their manufacture?

A. The drawer legs were knit on an ordinary spring needle-fashioning machine. The ribs at the ankle were knit on a flat-ribbed machine with two sets of needles, and applied by sewing on or looping onto the loops of the legs. The garment was then seamed up by hand, by which I mean taking each of the selvage loops on the needle and making the ordinary overseam. The drawer was then sent to the scouring-room, going through the ordinary processes of milling and scouring and then was dried and shaped on the forms, and then was taken to the finishing-room, the top or hip portion being cut off to the proper length and shaped. The open facings, having been first cut to the proper form, were made up first on a sewing machine and then applied to the drawer by a sewing machine. The button-holes were made upon another machine. The buttons were sewed on. The woven suspender straps were applied by a sewing machine, and after putting in the eyelets and lacings, the drawer was ready for the packing-

94 room. I speak with some confidence with regard to the process, having employed a good many men first and last from

Cartwright & Warner's establishment where this drawer was made, as well with regard to the knitting of the garment as to the finishing.

Q. This exhibit, No. 2, as it appears here in evidence now, the completed garment, contains a woven fabric as well as a knitted fabric, does it not?

A. Yes, sir; I might have included in the woven fabric the reinforced portion at the crotch, which I did not notice at first.

Q. That garment did not appear in this shape when it came from the knitting machine?

A. Certainly not.

Q. What were the articles represented by Importers' Exhibits Nos. 1 and 2, the shirt and drawers; under what trade names, if any, were they bought and sold in the trade and commerce in this country prior to October 1, 1890?

A. Knit goods generally—underwear, underclothing.

Q. You used the expression "knit goods and underwear." Can you tell us whether the term "knit goods" had any special trade significance prior to October 1, 1890; and, if so, what did they include?

A. It would generally refer to all looped fabrics made on a knitting machine, shirts and drawers or underwear or knit wearing apparel.

Q. Of all kinds?

A. Of all kinds.

Q. You said "made on a knitting machine," or knit by hand, I suppose?

A. Yes, sir.

Q. Now, will you examine Exhibit No. 3 and state, if you know, how that was made and what materials entered into its make?

A. The legs of the drawer were knit upon an ordinary flat-
95 stitch fashioning machine. The cuffs or ribs at the ankle were knit on a separate machine and applied in the way previously described. The drawer was then seamed on a separate machine—sewing machine—which takes the loops of the selvage after they have been run on, so called, to the points of the machine, with the exception of the front portion of the back, which I notice by the welt has been cut to fit the person, so as to make the garment of its proper size and shape at the top. The hem at the top was turned on a machine.

—. What machine?

A. Knitting machine. The knitting was commenced at the top, the back portion was widened until the crotch was reached, and from that point it was narrowed, the widenings being of a distinct character from the narrowings. The string or tape by which the garment is drawn into the proper size was applied after it was finished.

Q. What is the string or tape? Is that a woven or knitted fabric?

A. That is a woven fabric.

Q. Was this garment in its present shape complete when it left the knitting machine?

A. No, sir; there has been a good deal of labor expended upon it, particularly in the seaming and the shaping of the front, the overcasting and felling of the seams, the application of the ribs at the ankle.

Q. No. 4, drab stockings. Will you answer the same questions with regard to those?

A. This stocking is knit on the ordinary stocking machine—flat stocking machine—so called, full fashioned. It was commenced at the top by turning the welt on the knitting machine. The
96 knitting then proceeded, knitting a flat fabric, to the point where the heel, so called, commences. It is knit in a single section to that point. Then another carrier was introduced, and the two sides of the heel were completed. The article, the leg, was then removed from the first machine. The loops at the end of the heel were then transferred to another machine or run onto another machine and were joined by the ordinary sewing-machine stitch, as described by Mr. Spencer in his testimony of yesterday. The leg portion was then taken and transferred to another machine by running on the selvage loops of the heel, and the sole of the stocking, of the foot, so called, was then knitted until the toe was reached, and then by means of another machine the loops across the toe were joined with the looper or linker, as described by Mr. Spencer. The stocking was then finished as far as the knitting was concerned.

Q. What then remained?

A. It then remained for the stocking to be sewed up or seamed up, which in this pair I notice has been done by hand. Sometimes it is done by hand and sometimes by a separate machine, each of the loops of the selvage on the sole of the foot, also of the leg, being taken by the needle, the ordinary hand stitch.

Q. Did this Exhibit No. 4 come from the knitting machine completed as it now appears?

A. It did not, sir. I might say that it costs more to seam it than it would to knit it.

—. The labor of seaming exceeds the cost of knitting?

97 A. Yes, sir.

Q. Will you examine Exhibit No. 5 and tell us about that?

A. What I said in regard to Exhibit No. 4 would be true of No. 5.

Q. Then the same testimony applies to No. 5 with regard to the relative cost of knitting and sewing?

A. Yes, sir.

Q. Now, with regard to No. 6, drab socks.

A. The ribbed portion at the top was first knitted on the ordinary flat rib machine with two sets of needles. The loops were then transferred to the ordinary flat knitting machine—stocking machine—and from that point the knitting proceeded as described with reference to the lady's stocking until the heels were reached and finished. The loops at the heel were then sewed or looped as described heretofore. The foot was knitted on a separate machine.

The stocking was then completed as far as the knitting was concerned. On another machine the loops at the toe were crocheted or seamed or looped. The stocking was then seamed up on a separate machine. I notice in this case it was done on a machine; the corresponding lady's stocking was done by hand.

Q. That is, the sewing was done by machine?

A. Yes, sir.

Q. Did that article come as it is from the knitting machine?

A. It did not, sir.

Q. I show you No. 7, black socks.

A. My testimony in regard to Exhibit No. 6 would be applicable — No. 7.

Q. No. 8, brown socks.

A. What I said with regard to the previous exhibits is true of this sample, with the exception not only that the joining of
98 the loops at the toe and the seaming of the stocking were performed by hand, but also the silk clock or embroidery was applied by hand.

Q. Did this article come complete from the knitting machine?

A. It did not. I might say in a general way that none of these stockings would have been of any service whatever for wear as they came from the machine. They were in a flat or straight form and they were made into a stocking by joining the selvages.

Q. No. 9, brown socks.

A. What I said in regard to the previous sample would be applicable to this.

Q. The same as No. 8, is it?

A. Yes, sir.

Q. No. 10, black stockings.

A. My testimony with respect to the ladies' stockings previously shown me would be applicable to this stocking.

Q. That was No. 4, I think?

A. Yes, sir.

Q. Did that article come complete, as it is here, from the knitting machine?

A. No, sir; it did not. I might have said in regard to all these stockings that have been shown to me that after the seaming or making-up process they were dyed. They were all dyed in the piece; none of them are ingrain stockings.

—. No. 11, baby's socks.

A. This sock was made in the same way as the men's socks. The rib at the top is knit on a separate machine, transferred to the other knitting machine, and the processes from that time on were the same as have been described already with reference to the other stockings. This is seamed by hand.

Q. Did that article come complete from the knitting
99 machine as it is here?

A. It did not, sir.

Q. The union suit, No. 12.

A. This garment was knit in a manner similar to that described in speaking of the drawer, Exhibit No. 2, by commencing at the

top, knitting the body portion straight until the hip was reached, when the machine widened until it reached its widest portion. From that point as the knitting proceeded it was narrowed automatically until it reached the end of the leg. Then the ribs at the ankle, which had previously been knit on another machine, were applied in the manner heretofore described.

Q. By sewing?

A. Yes, sir; the regular Willcox & Gibbs stitch; I can explain that to the court. By taking hold of the end and pulling it you would pull the two pieces apart. The garment was then seamed up and pressed.

Q. How was it seamed up?

A. Seamed by hand.

Q. By that you mean sewed up?

A. Yes; one loop at a time with a needle by hand. The portion at the top was removed, thus forming the shape of the neck, cutting the front a little lower than the back, as is usually the case. The top section was covered with a binding, which is a narrow woven fabric and stitched on by means of a sewing machine. I might also have added that the narrow ribs at the arm hole were also knit on another machine and applied in the same manner as heretofore described.

Q. Sewed on?

A. Yes, sir.

Q. How many different parts of that garment were put together to make it in the completed shape?

100 A. As re- the knitted portion, you mean?

Q. Yes.

A. There are five portions knitted separately.

Q. Part of that garment is a woven fabric and part a knitted fabric?

A. It is, sir.

Q. Part knitted and part sewed?

A. Yes, sir.

Q. So that when it comes from the knitting machine it was not in its present shape or fit for use?

A. No, sir; not until it was made up. It was made up by subsequent processes.

Q. How about the labor applied to the different processes of knitting and sewing, &c.; which was the greater?

A. It cost more to finish it than it did to knit it. We make goods of a similar character and we pay by the piece.

Q. Most of the labor was applied after it left the knitting machine?

A. Yes, sir.

Q. Was there any different meaning or any special trade meaning to the term "wearing apparel" at the time of the passage of the tariff act, October 1, 1890, and prior thereto from its ordinary meaning in every-day speech?

A. Not that I am aware of, sir.

Q. And that term, as commonly and commercially understood, included what?

A. I should say it included all articles of clothing of every description.

Q. Underclothing and overclothing?

A. Yes, sir.

Counsel for the importers object to this line of testimony on the ground that no foundation has been laid for it.

Q. Can you illustrate by any exhibits here the difference
101 between the knit fabric and wearing apparel?

A. I should say that the exhibits which have been put in evidence, including Exhibits K, L, Q, M, and N, could all properly be called knit fabrics.

Q. And the Importers' Exhibits from 1 to 12, which you have just examined, what would they illustrate?

A. I should say that they would illustrate what you have spoken of in your question as wearing apparel.

Q. Completed garments for wear?

A. Completed garments ready for wear—ready for use as an article of clothing.

Recess.

Cross-examination by Mr. KETCHUM:

Q. You are the secretary, as I understand it, of the company with which you are connected?

A. I am, sir.

Q. What is the name of that company?

A. The American Hosiery Company.

Q. Where is its principal place of business?

A. The offices of the company are at New Britain, Conn. The goods are manufactured in that town. We also have an office for the sale of the goods at 110 Franklin street, in this city.

Q. Whose office is that; just the name of the company?

A. Yes, sir; the American Hosiery Company.

Q. Any other name?

A. There is other business in the same building.

Q. In whose name?

A. Mr. James Talcott.

Q. Is he the brother of the president of your company?

A. Yes, sir.

102 Q. Are the names of any other hosiery companies up there—signs?

A. The New Britain Knitting Company and a number of others.

Q. Please name them.

A. I don't know them; I have no connection with them at all.

Q. The American Hosiery Company?

A. Yes, sir.

Q. How long have you been connected with that company?

A. Since 1868.

Q. And your principal business in connection with knit goods has been in connection with your association with that company?

A. Yes, sir; with the manufacture of knit goods.

Q. Had you any experience in such goods before you became the secretary of that company?

A. In the sale of them I had.

Q. How much experience?

A. I had six years' experience as a salesman in a dry-goods house.

Q. What house was it?

A. A house at Hartford, Conn.—a retail house.

Q. A retail dealer?

A. Yes, sir.

Q. What goods did that house deal in?

A. In a general line of foreign and domestic dry goods.

Q. It was a general dry-goods house?

A. Yes, sir.

Q. Did it deal in outside clothing?

A. Yes, sir.

Q. Did it deal in underwear?

A. It did, sir.

Q. Did it deal in coats and vests made up ready for clothing?

A. Ready-made clothing for ladies—cloaks.

Q. For ladies only?

A. Yes, sir.

Q. Not for men?

A. No, sir.

103 Q. No coats, vests, or pants?

A. Ladies' coats and children's coats and suits.

Q. Men's I mean.

A. Not any men's; no, sir.

Q. Is that a large house?

A. It was the largest house there at that time.

Q. What was the name of it?

A. Star, Burkett & Co.

Q. Since 1860 you have had no business as a salesman at all, as I understand it?

A. Not, excepting that I have given my attention to the sales of our own production.

Q. I mean as a general tradesman?

A. No, sir.

Q. What goods does your factory manufacture?

A. It manufactures a great variety of underwear of all kinds.

Q. Anything outside of knit goods?

A. No, sir.

Q. It is underwear, then, is it not?

A. Not altogether underwear.

Q. Not exclusively underwear?

A. No, sir.

Q. What is it besides that?

A. We make outside shirts, outing shirts, and overshirts, and

goods of that character that are worn outside the underwear from knit fabrics.

Q. They are always knit fabrics?

A. From knit fabrics the outside shirts are—from cloth in the roll.

Q. They are from knit fabrics?

A. Yes, sir.

Q. They are knit goods nevertheless, are they not, all of them?

A. Yes, sir; they might be called knit goods, I think.

Q. Whether for wear externally or internally, are they not?

A. Yes, sir.

Q. You have spoken here of what you call cloth; what do you mean by cloth?

104 A. I should say that cloth was any kind of a textile production or manufacture that may be woven—may be knitted and adapted to a great variety of uses.

Q. Do you limit it to length or width or form of production?

A. No, sir; I would not limit it in that respect arbitrarily, but still technically a cloth is a product that has been woven or knit and not as yet adapted to the uses for which it was made. The sleeve of my coat is really a cloth, but I should hardly think a pile of that lying in a tailor's shop would be spoken of as a cloth.

Q. Do you mean to say that the sleeve of your coat just as it exists there before us is cloth?

A. It is of cloth—it is cloth.

Q. Of cloth?

A. It is cloth—of cloth.

Q. That is not the point.

A. Not in the commercial and ordinary use.

Q. We want the commercial and ordinary use. We want your definition of cloth—of knit cloth.

A. I should say that knit cloth, as understood in the trade and as ordinarily used, would be like the exhibits or similar to them.

Q. That is not sufficient. I don't want to complicate your answer by twenty exhibits in this case. They are different, all of them, from each other. I think we ought to have from you as an expert a definition of what you mean by knit cloth.

A. I beg your pardon. I do not mean to dodge your question at all. I understand a cloth to be a fabric which has been woven or wrought upon any machine, ordinarily with a given width,

105 and which in all commercial uses is put up in a roll or in a piece and is sold by the yard.

Q. You say ordinarily in a given width, but not always and necessarily a given width. Is it or is it not?

A. It varies, of course, in width; not necessarily a given width.

Q. Not necessarily in a given width?

A. No.

Q. Now, we have here an exhibit which is different in width from point to point; you may recollect it.

A. Yes, sir.

Q. Would you call that a cloth?

A. I should not, sir.

Q. What would you call it?

A. I have occasion to handle those goods every day and speak of them every day. We speak of them about the mill as drawer legs or sleeves or bodies.

Q. Then that is not what you call cloth?

A. No; it is not what I call cloth.

Q. Now, suppose a knit article, instead of being with a selvage or edge as a limitation, should be primarily cylindrical in shape and of the same diameter right along so you could flatten it down and there would be an upper and lower part to it and yet no edge, it would be continuous, and suppose that should run in exact width right along for a number of yards and then be cut off, would you call that a cloth or not?

A. I should call it a cloth; yes.

Q. Then your idea of knit cloth is that it must be within parallel lines; is that the idea?

A. I gave a definition of cloth as I understand it, as it is
106 used in the stores, and as an article of trade.

Q. I understand that this piece which varied in width was denominated yesterday a fabric?

A. Yes; it was, I think.

Q. Do you agree with that denomination?

A. It is in one sense a fabric.

Q. No; but generally, according to the language of trade and commerce?

A. I understand you refer to these specially (indicating). In the language of trade and commerce, I do not think they are what you would call a fabric.

Q. You would not call those fabrics?

A. No; I would not. They are a fabric. It is difficult to limit that term. A great many things are called fabrics. The chair I sit in has been fabricated. Sometimes they speak of a man's testimony as a fabric.

Q. Sometimes a fabrication; but this is not a case of that kind, I judge.

A. I am using the word fabric as it is used commercially and ordinarily.

Q. The chair you speak of is unquestionably a fabrication. Do you consider it a fabric?

A. It might be so considered; not a textile fabric.

Q. Not a textile fabric, but a fabric?

A. It might be so considered, but I think it would be straining the language considerably to call it a fabric. I was merely remarking that the word has a wide range, if you are tied up to a particular definition.

Q. You understand that to be so in trade and commerce as well as in ordinary parlance, do you not?

A. Yes, sir.

107 Q. Now, I would like very much to know the correct name for the knitted piece which we saw yesterday that was adapted for cutting in various places by dropping a needle, and so it was

wide and narrow, and wide and narrow, and so on. I would like to know your name for that.

A. We call them at the factory sleeves and legs and bodies. They are made in dozens—cut apart and tied up in dozens—paid for by the dozen—and entered on our books as legs or as bodies or as sleeves. I never speak of them in any other way.

Q. Would you consider them wearing apparel?

A. I should think they were unfinished portions of wearing apparel.

Q. Is there any name for them beyond legs, sleeves, &c.?

A. The ordinary name that I gave given it.

Q. If somebody should take up a piece of that stuff made in that way and say to you, "What sort of a fabric is that?" what would you answer?

A. I should say it was a knit fabric.

Q. I understand—perhaps I do and perhaps I do not—that the knit result of manufacture, if it is completely the result of a process of knitting, is one thing, whereas if it is not completely, entirely, and exclusively the result of the knitting process it is some other thing. Am I right?

Objected to as immaterial.

A. I would like to clearly understand your question.

Q. I will relieve you from answering that. Have you ever
108 seen a drawer, a shirt, a sock, or a stocking made complete—fit for use—entirely by the process of knitting with no other process whatsoever, hitching together, fastening together, attachment of anything, or otgerwise in connection with it?

Objected to as immaterial, it appearing by the exhibits of the importer that none of them are made in such a manner.

A. I have, sir.

Q. What would you consider such an article as that?

Same objection.

A. The article that I saw was a cotton sock on an experimental machine, the only one that I ever saw in my life in Saxony.

Q. Suppose it was a woolen or worsted stocking, what would you consider it?

Same objection.

A. It would be the same article, I suppose.

Q. What do you mean by the same article?

A. A finished stocking.

Q. Would you consider it a fabric?

A. In one sense I should; not in the general acceptation of the term.

Q. In what sense would you consider it a fabric?

A. A fabric is something that is wrought or made or fabricated.

Q. Now, it is very important for us here, we all understand that, that we should get at a correct understanding of the word fabric. If

fabric means piece goods only, with edges, and manufactured so that those edges shall be parallel to each other and nothing else, we want to know that. If it means that those edges may be
109 zig zag, we want to know that. If it means any completed thing whatsoever fit for use and produced by the single process of knitting, we want to know that. I think it is fair that we should get the experts to explain that to us and give us the best information that they have upon that subject. At least we should know where they draw the line.

A. I do not claim to be an expert in the use of language or the definition of terms. I am giving my opinion in regard to the word in its common and general acceptation, which is that the word "fabric" ordinarily applies to the cloths of uniform width of piece that are bought and sold by the yard and sometimes by the pound; ordinarily by the yard.

Q. Then you limit it to those of uniform width? I so understood your answer.

A. Yes, as ordinarily used. I do not deny, as I have already stated, that the word fabric has an application to almost any article that is made.

Q. Do you know of any use of the word in trade and commerce which is different from the ordinary use in every-day life of that term "fabric"?

A. I am not aware of it.

Q. Of course you have had no dealings at all in such coats and other things as you have produced here to-day?

A. Excepting to buy and wear them for my own personal use.

Q. I would like to ask you with regard to Exhibit C, how those ridges are made.

A. They are made automatically by the operation of the machine. The machine has within itself the control of all the motions.

Q. The knitting machine itself does that, does it?

A. Yes, sir.

110 Q. The same machine that makes the flat part?

A. Yes, sir; they are put on at regular intervals, which may be altered at will.

Q. Of course, there is a great variety of stitches and forms that the knitting machine is capable of making?

A. Yes, sir; all characterized by the loop form.

Q. Now, about the dyeing. Do I understand that this blue or bluish sample was dyed in the piece?

A. No, sir; I was referring to the stockings.

Q. Only the black stockings?

A. The black and, I think, the tan.

Q. How is it with the Jersey cloth, so called? And, by the by, is it dyed in the yarn or in the piece?

A. In both ways.

Q. So the mere fact of dyeing the one way or the other is not material in connection with this controversy?

A. No.

Q. Now I show you a sock and would like you to tell what it is and how it is made.

A. It is a sock that is evidently made on what we call a latch-needle machine.

Q. It is wool or worsted, is it?

A. I should judge it was wool or worsted.

Q. Do you conceive that that is made by separate processes or single processes?

A. I think by a single machine.

Q. Won't you explain the peculiar look of that heel? There might seem to be a seam there.

A. I have had no practical acquaintance with machines of this character. I understood that machines were made that formed the heel as the knitting proceeded. This seems to be one of that kind.

111 By Mr. COUGHTRY:

Q. What machine did you say that was?

A. A latch needle.

By Mr. KETCHUM:

Q. Now, if it should prove to be a fact that that sock were made by a single knitting machine in one process from beginning to end—you see there is nothing in it except yarn—would you call that a fabric or would you not call it a fabric?

A. In the general acceptation of the term, as I understand it, I should not say it was a fabric.

Q. What do you mean by the general acceptation?

A. As the word is commonly used in centers of trade in the buying and selling of such property.

Q. What would you call it?

A. I should call it a stocking. Speaking of them in the packages in which they *n* are usually sold, I should say a dozen of stockings or a dozen of socks or a dozen of half hose.

Q. If your sleeve can be considered a fabric I should think that might be.

A. That may be.

Q. Do you refer to trade and commerce?

A. The general and reasonable use of the word.

Q. Outside of trade and commerce?

A. I saw I do not regard it as a fabric, applying that word in its ordinary acceptation and general use.

Q. By the dictionary or by trade and commerce?

A. By trade and commerce and by the dictionary.

Q. I would like to ask you this question. You have testified somewhat to the cost of the labor of simply knitting the shirt or drawer as compared with the labor, together with the ma-
112 terials in addition. Now, I want to ask you, taking into consideration the entire cost of the shirt or the drawer from beginning to end, the cost of the yarn, the cost of the knitting, and all these other items of cost, what proportion does the entire cost of pro-

ducing the knitted result complete bear as compared with the other items, relatively?

A. A word of explanation. In answering your question I might tacitly admit that I said that the cost of the knitting was one-fifth of the labor and material. I said, I think, that the material which was afterwards applied in finishing, in the making of the facings and the backs and silk front, buttons, silk, and all those things.

Q. That is correct. In round terms, how does the cost of finishing the shirt or drawer-, including the material, compare with the cost of making the article complete, so far as the knitted portion is concerned?

A. That would be a very difficult question to answer. We make underwear of silk and of cotton and of cashmere and worsted and merino.

Q. I am referring to woolen underwear, such as we have here under consideration?

A. This is merino, I think.

Q. What is merino?

A. A combination of wool and cotton carded together, as generally understood.

Q. Take this sample, this shirt, Importer's Exhibit No. 1; what is that?

A. I understand you would like my opinion as to what portion of the cost would be in labor and what proportion in material?

Q. No, sir; not at all. I want to ask you the cost of producing the knitted portion of this article, including the cost of
113 material and the cost of labor in knitting, that as compared with the finishing expense which you have detailed most happily and which I need not go over.

A. Of course, including the cost of the yarn and the cost of the garment ready for the finishing-room, it would be very much more than the subsequent cost of the finish and the material.

Q. You answered with great promptitude and great certainty as to the one-fifth, you recollect, as compared with all the rest. Now, I cannot but feel that you perfectly understand the question. Answer it in any way you please.

A. As I understand the question, it is you would like to know what the cost of the knitted shirt, including the yarn that is in it, bears—that is, before the finishing up to the point after it is knit, including the process of knitting and the price of the yarn—what proportion the expense up to that point is to the expense of the finished article?

Q. Very well; put it in that way; including the cost of the yarn, the knitting of it into the forms used in the garment; and if there was any dyeing, the dyeing of it before that time. Now, in addition to that you have talked of the assembling of things together, these various things, and of the stitching. You recollect those items? Now make a separate consideration of them and tell me, on the basis of 100 per cent., what percentage or what proportion the first expense bears to the second.

A. It is pretty difficult to answer the question, but I should say approximately 70 per cent.

114 Q. At least that? Would you consider it at least 90 per cent. in ma-y cases?

A. I should not.

Q. Would you consider it in any case 80 per cent?

A. It might be in some cases. It would depend upon the style of the finish. I would like to say that, not knowing but what these questions might come up, I brought down some estimates that I have made of the cost of goods in different departments and I would simply like to confirm what I have said.

Q. That will be the privilege of your friend on the other side of the table. Referring to this shirt again that I have shown you, are you satisfied that those finishing elements or cost are more than five per cent. of the entire cost of that article?

A. I *am*, sir—that is, in this country.

Q. Then you only speak of this country?

A. I have had no experience where that shirt was made.

Q. Are you sure that it is ten per cent.?

A. In my opinion it is more than that.

Q. But you are not positively certain, of course. You give the best estimate you are able to make. Have you ever been abroad?

A. I have.

Q. Have you ever visited factories abroad that make these goods?

A. I have.

Q. How many times?

A. I have only been abroad once.

Q. How long ago was that?

A. Last year.

Q. Did you go—excuse me for the impertinence—on business?

A. Mainly; partly on pleasure.

Q. Did you visit any factories on the other side?

A. I did, sir.

115 Q. Several?

A. Yes, sir.

Q. I noticed that you used the phrase in your direct examination "knit underwear," did you not?

A. Quite likely I did.

Q. Now, that is the phrase, is it not, that is descriptive of this shirt?

A. Yes, sir.

Q. And of the drawers?

A. Yes, sir.

Q. The controlling, distinguishing fact in connection with that article is that it is knit. Is not that so?

A. The principal fact is that it is a garment, a shirt. In defining it I should not say that it was simply a knit thing; I should say that it was a knit shirt.

Q. A garment?

A. A garment.

Q. And when you get through with the garment and come down to the next point, that is the great point, isn't it—it is knit?

A. Yes; it is a knitted garment.

Redirect examination by Mr. PLATT:

Q. And below that is the other great fact that it is made of wool, which grows on the sheep, is it not?

A. In part of wool.

Q. When the term fabric is spoken of by the trade in regard to dry goods generally it refers to textile fabrics, does it not?

A. Yes, sir.

Q. Some kind of textile fabric?

A. Yes, sir.

Q. And the term fabric when used in connection with any kind of textile fabric refers to the mode or manner of its manufacture, does it not?

A. Yes, sir.

Q. Thus there are wove fabrics and knit fabrics?

A. Yes, sir.

Q. Out of which such articles as these in suit are made?

116 —. That is as I understand it.

Q. I find here in Bryant & Stratton's book-keeping, under the vocabulary of mercantile terms, the term "fabric-manufactured cloth." Do you agree with that definition?

—. Yes; I think that is correct.

Q. You stated that you had made an estimate of the expense of making such articles as those in suit from the knitted fabric. Can you state with any more particularity the various percentages of cost than you have in your direct testimony already? Have you any memorandum by which you can give us a more exact statement?

A. I have since referred to estimates that were made from time to time as we were arranging the prices of our goods at the mill—the detailed cost of making the goods—in which each department is classified by itself, the knitting and the seaming, pressing, finishing, and packing, and I find that in most cases my estimate was below the actual cost—that is, it very often exceeds one-fifth—that is, it very often is less than one-fifth, the knitting is. I simply wanted to confirm my testimony in regard to the off-hand opinion that I gave without consulting any figures.

Q. So that the cost of knitting is generally less than one-fifth?

A. As an average. It depends, of course, upon the style of goods. I am referring to our own goods.

Q. In your estimate as to the comparative expenses, including the yarn from which the fabric is originally made, did you include the cost of weaving the silk that appears in the bands and

117 fronts of these articles or just the cost of the silk as it appears on the face of the garment here in evidence?

A. I included the trimmings that were added.

Q. The cost of the trimmings?

A. Yes, sir.

Q. In the shape they appear?

A. In the shape they appear.

Q. That is, you included, of course, how much the silk facing, or whatever you call it, would cost to buy and put there?

A. Yes, sir.

Q. And the other expenses that you have alluded to?

A. Yes, sir.

Q. Clothing fabrics are usually sold by the yard or piece in trade and commerce, are they not, and were they not prior to October 1, 1890?

A. They were; by the piece or the yard.

Q. And the term fabric, as I understand your evidence, as ordinarily used, refers to the material out of which any completed article is made?

A. Yes, sir.

Q. And when we speak of a coat as being a cloth fabric or of a cloth fabric we refer to it in the sense that it is manufactured out of a cloth fabric?

A. Yes, sir.

Q. Out of a woven fabric or out of a knit fabric, as the case may be?

A. Yes, sir. I would like to make one statement. Counsel asked me several questions in regard to my connection with the company. I would like to state, in addition to what I said before, that I am the superintendent of the company and have been during my connection with it, and that my time is occupied almost exclu-
118 sively in the oversight of the details of the mill, having entire charge of the operations of the mill and the manufacture of the goods. It is true that I am the secretary of the company, but I have no care of the book-keeping of the concern or of the accounts of the company, and my only duties in regard to that office are to sign such papers as require the official signatures of the officers of the company. I have nothing whatever to do with the accounts, books, or office work. Our by-laws prescribe that all those matters are under the management and control of the treasurer.

By Mr. COUGHTRY:

Q. You do not sell the goods?

A. I have in connection with the other officers of the company the oversight of the sales. The question was asked, too, in regard to our place of business here and its relation to other knitting mills. I would say that our company is entirely independent of any other concern or commission house—that is, sells its own goods—and has never sold a dollar excepting on its own bill heads and has collected every penny of its own accounts and paid its own bills. The goods are sold and billed from the American Hosiery Company, which collects its own moneys.

119 CHARLES E. SPENCER recalled.

By Mr. PLATT:

Q. Since your examination yesterday have you examined the importers' exhibits here—1 to 12—that were put in evidence this morning?

A. Only one of them.

Q. Which one is that?

A. The union dress I have in my hand.

Q. Just look at No. 1. You have heard the testimony of Mr. Davison as to the mode of manufacture of that article?

A. Yes, sir.

Q. What have you to say as to the correctness of his statement in regard to the mode and manner and different stages of manufacture? Have you anything to add?

A. Unless my eyes deceive me the only difference I would make in his testimony is that these sleeves are sewed in and not knit from the edge of the body. I am confident that they are sewed in; otherwise I would ebdorse his testimony concerning this exhibit as correct. I had not seen the garment before.

Q. Did that article as you find it there come from the knitting machine complete fit for wear?

A. No, sir.

Q. What have you to say as to the cost of labor and materials put in that article in order to make it what you find it compared with the cost of the knitting?

A. It is a very difficult thing to strike closely, because the material of which it is composed forms so large a part of the cost, which would alter the percentage of the cost of knitting. The work would have to be figured to give you a figure with any degree of
120 accuracy relative to the texture of the fabric. I should say in a merino of about 50 per cent. wool and cotton that the bare cost of knitting alone in relation to the whole cost of the completed garment would run from seven to ten per cent. If it were made out of all wool the percentage would decrease, as you can readily see. It is a matter of arithmetic.

Q. Leaving out of view the material, take the cost of labor of knitting and the cost of labor of putting the other work on that undershirt, how would those compare?

A. Including the price of trimmings?

Q. No; irrespective of material on either side. Let us get at it that way.

A. The labor cost you want, the relative labor cost?

Q. The relative labor cost, irrespective of material.

A. I have no figures with me on which to rely or to refer to, but should judge that the cost of the knitting would not be more than one-fifth; it would be less than one-fifth of the labor cost; it would not certainly exceed one-fifth.

Q. And the other work on the garment would be four-fifths of the labor cost, then?

A. Yes, sir. I base my calculation for this in part on the rela-

tive number of persons employed, because that makes the labor cost. There are less than one-fifth of the people employed in getting this shirt up in the knitting room, but they are paid a little more wages than the average thought the mill as skilled labor. I also confine myself to goods of this character, fashioned goods. Enlarg-
121 ing into the field of cut goods or cloth, your knitting cost is very much less yet.

Q. What is the relative number of laborers employed on the two processes of knitting and the other processes necessary to produce the shirt?

A. If you wish to include the making of the yarn we have quite a problem.

Q. I don't mean that. I mean taking the material.

A. The yarn?

Q. The yarn. Now, there is a certain knitting process and then there are other processes to finish the garment. What is the relative number of laborers employed on knitting and on the other processes necessary to finish the garment?

Objected to as indefinite.

Q. Are all the other processes except knitting done by one person?

A. No, sir.

Q. Usually?

A. No, sir.

Q. How many?

A. In the matter of seaming, which is almost the next thing to knitting, these goods have to be accounted for in dozens, the pieces which make the garment, the pieces of the knitted fabric, and are bunched together—assembled, we might say—by one class of people and inspected, weighed, counted, passed to the seaming-room where one class of help do this work, the joining of this class of stitches onto that. Another operator on a separate machine puts in this sleeve; it is a different position of the stitches relative to each other. Each is skilled in their own part. Another one, usually the
122 same one, though, joins these two, the stitches being practically the same. That makes two operations. The third is the seamer, doing the parallel seams—the edges. They are again inspected and passed down to the mending department. They are then washed, boarded, dried, brought back for the finishing, cut—I think, though, I have described this once, but I am going over it to get at the number of forms.

Q. I want to get at the number of different people that have to work on the shirts.

A. I have lost my count since I left the seaming room. We take this as it goes from one process to another, each being an expert in their own specialty or part. They are measured and cut, and I could not tell without going to the book just how many handle that garment after that, the making of the different pieces and stitching them on. I would not attempt to follow it out without consulting

the books. I am familiar with the method, but to give you the exact number I could not say at this moment.

Q. There are a considerable number of employees who do these separate things?

A. Yes, sir; as to the relative number in relation to knitting—I think that was a part of the question?

Q. Yes.

A. I should think that there would be five employees to one knitter on this class of work, making five-sixths of the employees not knitters.

Q. Now, the drawers, Exhibit No. 2. You have heard Mr. Davison's testimony with regard to the different processes of producing that garment. Have you anything to add to his testimony in that respect?

123 A. Nothing, sir. I don't know whether he remarked that the reinforcing was done by hand. I notice that it is. I should say that he had reported it correctly.

Q. Would the same proportion as to the number of employees or laborers on that garment apply as in regard to the previous exhibit?

A. Yes, sir.

Q. Did that garment, Exhibit No. 2, come from the knitting machine complete?

A. No, sir.

Q. Exhibit No. 3, the black drawers. Have you anything to add to Mr. Davison's testimony as regards the mode and method of manufacture of that garment?

A. No, sir.

Q. Did that come from the knitting machine complete?

A. No, sir.

Q. Will you please examine Exhibits 4, 5, 6, 7, 8, 9, 10, 11, and 12 and state if Mr. Davison's testimony as to their mode of manuture respectively was correct and if you have anything to add in respect thereto?

A. I have not, sir. He reported some seamed by hand and some by machinery and I so find them.

Q. Did any of those exhibits examined by you come from the knitting machine complete for use or wear?

A. No, sir.

Q. And the same testimony with respect to the additional labor required to make them into garments that you have given as to Exhibits 1 and 2 applies more or less to these articles?

A. More or less; yes, sir.

Q. Some have more labor on than others?

A. Yes; some exhibits have more than others.

Q. Now, I show you Exhibit Q. Have you seen such merchandise as that in the market?

A. Yes, sir.

124 Q. What is it?

A. Knit fabric.

Q. Is it easy or hard to distinguish that from a woven fabric?

A. Ordinarily, with people not versed in the manufacture, I

should say it would be difficult to distinguish. An expert has no trouble.

Q. Was such merchandise as that bought and sold by the yard and in the piece in the markets of this country prior to October 1, 1890?

A. Yes, sir.

Q. And to what use applied?

A. To the manufacture of clothing, wearing apparel.

Q. Can you illustrate by any exhibits before you the difference in trade and commerce in this country prior to October 1, 1890, between knit fabrics and wearing apparel?

A. Yes, sir.

Counsel for the importers objects to this line of examination on the ground that a proper foundation has not been laid.

Q. Can you illustrate it?

A. Yes, sir; I can illustrate it. Here we have in Exhibit Q a knit fabric sold by the yard. Exhibit N I would refer to as a knitted fabric. Exhibits L, M, and H I recognize as samples of knit fabric as distinguished from finished shirts and drawers and underwear, wearing apparel, garments, stockings.

Q. Exhibits O and P, coats and pants. Are those articles of wearing apparel made from knit fabrics?

A. Yes, sir.

Q. How are they worn?

A. This a coat which is worn on the outside, and that is a riding pants, I should say by the reinforcement; they are worn on the extremities, on the outside of other clothing.

125 Q. So that wearing apparel or knit fabrics as known prior to October 1, 1890, were worn as outside garments and as inside garments both?

A. Yes, sir.

Q. Did you ever know of any distinction being made in such wearing apparel on account of being worn outside and inside?

A. No, sir; only as the one is underwear or underclothing and the other is more generally termed clothing, in the popular signification of the term.

Q. Two different kinds of wearing apparel?

A. Yes, sir.

Cross-examination by Mr. COUGHTRY:

Q. You have stated, I believe, that you were the manager of the Norfolk and New Brunswick Company?

A. At the factory the superintendent.

Q. How long have you been employed there?

A. I have been employed there since the 17th of June, 1865.

Q. And during that time your duties have been exclusively the production of the knitted hosiery or whatever it is?

A. No, sir; not exclusively.

Q. What other duties, may I ask?

A. I have been employed nearly seven years as superintendent of the factory, and previous to that I served in different departments.

Q. Of the same factory?

A. Of the same factory.

Q. Served at the factory?

A. At the factory.

Q. And which is that?

A. At New Brunswick.

Q. Have you during that time served in New York?

A. Not for any extended period.

Q. I would like to make it a little more definite. How long a time have you served in New York?

126 A. I have come into New York and gone home at night, and come back the next day sometimes and gone back the next night.

Q. During that time were you employed at the New York office?

A. No, sir; not as a headquarters there.

Q. While you came into New York in that way were you connected with the factory at New Brunswick?

A. Yes, sir; it is one concern—our headquarters in the city and our manufactory in New Brunswick.

Q. When you came in here did you sell these goods?

A. No, sir.

Q. At New Brunswick you were superintendent of the factory or was connected with the factory for all these years and it was not part of your duty to sell the goods, that being attended to by other employees of the same company. Is that not so?

A. Yes, sir.

Q. Before 1865 may I ask what business you were engaged in?

A. I was in the boyhood stage. I was at school and at home.

Q. Then your experience with regard to this is simply that which you have gained in your connection with the factory out there?

A. Yes, sir.

Q. At New Brunswick?

A. Yes, sir; and at Norfolk, Conn.; that is a branch. I have been there frequently.

Q. You have never sold or bought, excepting for your own use, wearing apparel, have you?

A. Not the finished article directly. I have bought the articles which compose these—the wool, the cotton, and the trimmings and the buttons. I have purchased them. I can spend money better than I can bring it in; superintendents generally can.

127 Q. But have you dealt in coats, vests, trousers, and so on—bought and sold them—excepting for your own use?

A. For my person and my family.

Q. Is it a fact that in making up goods of a fine grade skilled workmen are required to produce the finest work—that is, that there is a certain knack required in their production which all cannot attain easily, but which a certain class of workmen are employed upon? Do you know that to be a fact?

A. I would say yes.

Q. A superior grade?

A. Yes, sir.

Q. That is, the finer the goods are fashioned the best workmen are put upon them?

A. Not necessarily; not, sir.

Q. As a rule?

A. No, sir; there is very little distinction. As a class, the labor is highly skilled that is employed in getting up goods of this character.

Q. Is it not so that in some of the very finest grades special workmen, as you might term them, are employed?

A. Not as we run the factory. We give people an ample portion of the work to do. They are all skilled.

Q. All equally skilled?

A. As nearly so as human beings run, you might say.

Q. In the estimates that you have made of the proportionate prices of the labor upon these things, were they based upon the wages which you pay in your factory?

A. Yes, sir.

Q. Do you know whether those are the same as the prices paid abroad?

A. I know that they are more.

Q. The proportions, then, differ between here and abroad in regard to the labor performed in the different stages?

128 A. Yes, sir.

Redirect examination by Mr. PLATT:

Q. During all these years that you have been in this business have your duties and connections been such as to make you familiar with the trade terms used by wholesale dealers and jobbers in the class of goods imported here in this action?

A. Yes, sir; entirely so.

Q. And you have known of a great many sales of such articles?

A. Yes, sir.

Q. Have you been present when any sales were made?

A. At times.

Q. And generally familiar with the markets?

A. Yes, sir; it is part of my business to be posted on the sale of these goods. If they do sell to know why they sell, and especially if they do not sell to know why they do not sell.

Q. From your presence among sellers and buyers and large dealers in this class of merchandise during all these years and from your experience as narrated by your, are you familiar with the trade terms used in this trade or were you familiar on October 1, 1890, and prior thereto?

A. Yes, sir.

Q. Were you also conversant with trade publications that covered the market and the sales and prices of such merchandise as this in suit during those years?

A. Yes, sir; we take the trade papers at our place of business and I read them frequently.

Q. I forgot to show you Exhibit K. Will you look at the
129 five samples marked Exhibit K and state what they are?

A. I should say they were samples of knitted cloth.

Q. Usually sold by the yard or piece?

A. Yes, sir.

Q. For what use?

A. For making garments, largely jerseys. There are some special novelties that are devoted to various articles of wearing apparel.

Recross-examination by Mr. KETCHUM:

Q. I understand that your familiarity with the designation of goods and the prices obtained at sales is confined to the goods such as are manufactured in your establishment, knit underwear. Is that correct?

A. No, sir; I am familiar with other samples, such as the cloth just shown.

Q. Have you ever dealt in any other goods than knit underwear during this period of time to which you have referred?

A. No, sir; not as dealers or manufacturers, but I have made myself familiar with other manufactures made on knitting machines.

Q. Since when?

A. Ever since I have been in the business, and as these manufactures have appeared from time to time in the last twenty-five years.

Q. You have had a sympathetic interest in the whole subject?

A. That is the idea.

Q. But no practical connection with purchases and sales?

A. I think you are limiting me to a pretty narrow limit.

Q. I am only asking you. You are the one to make the limitation.

A. As to purchases and sales, I have not dealt in anything except the underwear.

130 JOHN D. ASHWELL sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?

A. I am manager of the Norfolk & New Brunswick Hosiery Company.

Q. Where is your office or place of business?

A. At 55 White street, New York.

Q. How long have you been engaged in that business?

A. About 18 years with this company.

Q. What class of merchandise do you deal in?

A. All kinds of undershirts and drawers and hosiery.

Q. Your trade is confined to that line of goods?

A. Yes, sir.

Q. Have you made large sales of that class of goods?

A. Yes, sir.

Q. What familiarity have you had with the terms used by whole-

sale dealers and jobbers in this country as to this class of merchandise prior to October 1, 1890?

A. I began as a boy in 1871 with this company and was with them for about a year. After that I was with Messrs. Arnold, Constable & Co. in their wholesale — as stock clerk for about two years, and afterwards went back to this company, and from that time have been a salesman for them up to the time that I was made manager a few years ago, on the decease of my father.

Q. Has it been a part of your duty and business to become familiar with the terms used in the trade in these articles generally in this country?

A. I have done little else than sell them for the last 15 or 16 years. That is my particular business.

131 Q. And in that business you have had, of course, frequent intercourse with merchants from all parts of the country dealing in these articles?

A. I have sold them all over the United States.

Q. Will you look at Importers' Exhibit No. 1 and state whether you are familiar with articles of that nature?

A. Yes, sir; I am.

Q. And have been for many years?

A. Yes, sir.

Q. Is there anything special or different about that article from the ordinary run of undershirts?

A. Nothing particularly, except this happens to be a fashioned shirt, and the ordinary run perhaps might be considered circular or cut shirts.

Q. By what name in trade and commerce in this country prior to October 1, 1890, were articles represented by that sample known and dealt in?

A. Hardly one specific name. They were known as knit undershirts or underwear or shirts and drawers. All of those terms have been used.

Q. Shirts and drawers would include No. 2; that is a shirt alone?

A. They are usually classified together.

Q. What other articles, if any, were included within that designation? Anything but undershirts and drawers?

A. Not under the terms undershirts and drawers; but underwear would include hosiery probably as well as undershirts and drawers.

Q. What did the term hosiery prior to October 1, 1890, in the trade and commerce of this country include?

A. To be literal, with those men that thoroughly under-

132 stood it, which were few, I think it meant simply hose and half hose; but, when used properly, we use the expression underwear and hosiery, although, from the fact that underwear is generally sold in the hosiery department, it is often spoken of as hosiery; and manufacturers, such as ourselves, although the principal part of our business is manufacturing underwear, we call ourselves a hosiery company, so that in trade it might be considered

correct to call these goods hosiery, and that is the trade usage of the term.

Q. Hosiery and underwear in the trade generally go together?

A. Yes, sir.

Q. Prior to October 1, 1890, was the term "knit fabrics" a trade term—that is, did it have any special meaning in the trade and commerce of this country different from its ordinary meaning?

A. I never heard of it. I never had a man ask me for knit fabrics in our line of business that I know of. Had he written to me for knit fabrics I should have told him that we did not have them, that we did not sell them, and sent him to parties who did make them.

Q. In the trade and commerce of this country prior to October 1, 1890, were the articles represented here by the importers' exhibits from 1 to 12, comprising shirts, drawers, socks, stockings, and the union suits, ever to your knowledge known as knit fabrics in the trade?

A. No, sir.

Q. Never bought and sold by that name?

A. No, sir.

Q. Within your experience?

A. No, sir.

Q. Over a range of 18 years?

A. No, sir.

133 Q. Did you ever hear—I ask you the same question covering the same period—as a trade term in the trade and commerce of this country prior to October 1, 1890, did you ever know such articles as are represented by the plaintiff's importations here to be known, bought, and sold as fabrics made upon knitting machines?

A. What particular class of goods have you reference to?

Q. The same class of goods that you have before you, shirts and drawers, socks and stockings.

A. No, sir.

Q. As a trade term?

A. No, sir.

Q. Did you ever see it on any bill-head?

A. No, sir.

Q. Either knit fabrics or fabrics made on knitting machines?

A. No, sir.

Q. How in your experience in the trade were they usually billed or bought and sold?

A. The shirts and drawers would be invoiced or billed as shirts and drawers, and the hosiery as hose or half hose, as the case might be. They would be so labeled on the box.

Q. You have stated, I think, that in trade and commerce prior to October 1, 1890, the term "knit fabric" had no peculiar trade meaning and no meaning different from its ordinary meaning. Were you familiar or have you been familiar with any articles that were ordinarily known as knit fabrics?

A. Yes, sir; I have sold a few.

Q. Are they represented here by anything that you find among these exhibits?

A. I have sold similar goods to these represented by Exhibit B in the roll or in the piece and by the yard.

Q. You have sold that by the yard or piece?

134 A. Yes, sir; not made with exactly that particular mixture of cotton and wool, of course, but all cotton.

Q. I show you Exhibit Q. Have you ever dealt in any merchandise of that character?

A. No, sir; not precisely that. I have known the goods, but we never manufactured it and I never sold it just like that.

Q. How long have you known such goods as those to be in the market?

A. I should say about eight or nine years since I first saw goods like that.

Q. Do you know whether they were imported goods or domestic goods?

A. They were imported, those that I saw.

Q. Look at Exhibit K. Are you familiar with goods of that class or character?

A. I am only familiar with those by familiarity with knit goods. I have never sold that same thing exactly.

Q. How long have you known of such goods as those being in the market of this country?

A. I could not say. Those are fancy patterns or fancy stitches. Some of them may not have been in the market very long, and I would not like to say how long I had known of those goods in the market. As a general class I have known that class of goods for several years, but those specific samples some of them seem to be new styles which may recently have been put on the market.

Q. In your experience prior to October 1, 1890, did the term "wearing apparel" have any other or different meaning in every-day speech?

Objected to on the ground that proper foundation has not been laid for such testimony.

135 A. Not that I know of.

Q. What do you understand to be the meaning of the term "wearing apparel of every description"?

Objected to on the ground that there is no such phrase used ordinarily in the trade, but it is a technical expression in the statute as to which the court is to pass in connection with this reference.

A. I should say garments to be worn on the person.

Q. Do you mean irrespective of whether they are outside garments or inside garments?

A. Yes, sir.

Q. Please look at the exhibits of the importers from 1 to 12, comprising shirts, drawers, socks, stockings, and union suit, and state whether in the ordinary and commercial use of the term

"wearing apparel" prior to October 1, 1890, such articles as those would or not be included.

A. I should think they would be included as wearing apparel.

Q. Is there any article there that is not adapted and made for the purpose of being worn on the person either of men, women, or children? I mean Exhibits 1 to 12, comprising shirts, drawers, stockings, socks, and union suit.

A. I should think they were all made for the purpose of wearing apparel.

Q. And for no other purpose?

A. I cannot conceive what else they would be used for.

Q. They would be worthless for any other purpose?

A. A man might make a mop of them, I suppose.

Q. Do you know the house of Libbey & Co.?

A. Yes, sir.

Q. Do you know what class of goods they deal in?

136 A. In woolens; shawls principally.

Cross-examination by Mr. KETCHUM:

Q. What is your special province now in connection with your present employment?

A. To take charge of the sale of the Norfolk & New Brunswick goods.

Q. They are exclusively underwear, are they not?

A. And hosiery.

Q. That is, socks and stockings in New York and New Brunswick?

A. They are manufactured in New Brunswick, N. J., and Norfolk, Connecticut.

Q. How long did you say that has been your employment?

A. I have been connected with the company, first and last, for about 18 years.

Q. And in all that time your business has been exclusively in connection with knit underwear, socks, and stockings?

A. As salesman; yes.

Q. Prior to those 18 years you were at Arnold & Constable's?

A. I was there about a year and a half or two years.

Q How old were you then, about?

A. I was about 19.

Q. Did you buy and sell goods for them at that time.

A. No, sir.

Q. You were only in the book-keeping department?

A. No, sir; I was in the stock department—underwear and hosiery.

Q. A sort of verifier, &c.?

A. I went there as a boy, you might say—as a stock clerk.

Q. You were not buying and selling goods?

A. I was not a salesman at that time.

Q. Prior to your going with them what was your employ-

137 ment?

A. I had been with this company previous to that.

Q. This same company?
A. Yes, sir.
Q. That was in connection with the same kind of goods?
A. Yes, sir.
Q. I would like to ask you to whom you would refer a customer who might come to you and ask for knit fabrics.
A. I should refer him to those parties who were importing them, such as Arnold & Constable or Lord & Taylor, and, if he wanted the domestic product, to Vietor & Achelis ann three or four other domestic commission houses that handle the goods.
Q. What is the name of that which has been called here by some woolen cloth (indicating)?
A. Such goods as this is Jersey cloth.
Q. That is piece goods, of a uniform width and sold by the yard?
A. Yes, sir.
Q. Is it your idea that the words "woolen fabric" should be confined and limited to that sort of article?

Objected to.

A. I don't exactly understahd the question.
Q. Is that the only thing that you understand to be a woolen fabric—the cloth or thing that has just been described?
A. I do not understand that it is the only thing that would be a woolen fabric; no, sir.
Q. What else would be?
A. A woven cloth as well as a knit cloth, or a cotton cloth as well as a woolen cloth.
Q. Would be a woolen fabric?
A. Yes, sir.
Q. Is that cloth the only cloth that would be known as a woolen knit fabric?
A. That is the only thing I know of.
138 Q. You would limit it, then, to piece goods of that description?
A. Yes, sir.
Q. Did you ever know these goods such as you are now dealing in to be bought or sold as clothing?
A. As underclothing, certainly.
Q. I did not say underclothing; I said as clothing. Well, you say as underclothing; you have known them bought and sold as underclothing?
A. Yes, sir.
Q. Now, is it not customary on the part of a person seeking to purchase such goods to ask for underwear and not for underclothing; is not underwear the term by which those goods are known generally in the trade?
A. Usually, yes.
Q. Can you, in all your life, recall a single instance in which a would-be purchaser came to you and asked for underclothing in connection with such goods as that?
A. Yes, I think I could a great many, although it is unusual. It

is not customary to ask for them as underclothing; they ask for them as underwear.

Q. Suppose somebody should come to you and take up an article such as this sample shirt of the importers and say, "Look here, what sort of a fabric is that, anyway?" What answer would you make to that question?

A. If he should ask me what sort of a fabric it was?

Q. If he should say, "What sort of a fabric is that, anyway?"

A. I should say it was a knit shirt.

Q. That means something made on the knitting machine, doesn't it, or by means of a knitting machine?

A. Yes, sir.

Q. Now, that is a circumstance that is perfectly well known
139 in trade, isn't it?

A. What, that it is a knit shirt?

Q. Yes.

A. No, it is not.

Q. By experts?

A. Well, so-called experts did not know them to be knit shirts not a great while ago.

Q. I mean the present existing experts?

A. I think any expert would know that to be a knit shirt—yes, sir.

Q. The reason I ask you is because I understood you to say that the term "fabric" made on a knitting machine was not a trade term and I felt that you had perhaps made a mistake.

Redirect examination by Mr. PLATT:

Q. If any one should ask you what kind of a fabric your coat was made of, what would you say?

A. I should say it was made of woolen cloth or worsted cloth.

Q. It is wearing apparel all the same, isn't it?

A. I believe so, yes.

Q. You made a remark—I think you did not aim to be so understood—when counsel asked you for examples of woolen fabric you said cotton cloth would be a woolen fabric.

A. I did not say it would be a woolen fabric, did I? I did not intend to say that. He asked me if a fabric could be made of anything else but woolen cloth. I said it could be made of cotton as well as wool.

Q. In speaking of a shirt of this character, Importers' Exhibit No. 1, as to the fabric, it would ordinarily be stated, would it not, to an inquiry such as made by counsel that that was a shirt made of knit fabric?

A. We often state in selling these goods that a shirt is
140 made of a very fine fabric. It is a common expression with salesmen to show the quality of the shirt. We pick the garment up and after calling attention to the shape and general finish of the goods we speak of the fine fabric from which it is made, to sell it; as a recommendation of the quality.

Q. Meaning the texture of the cloth?

A. The cloth from which the garment is produced.
Q. And the mode of manufacture?
A. Yes, sir.

Recross-examination by Mr. COUGHTRY:

Q. Were these exhibits that have been put in all, excepting those which were purchased by the previous witnesses, Mr. Davison and Mr. Spencer? Did all of those come from the Norfolk and New Brunswick mills, do you know?
A. These that Mr. Spencer brought came from our mills, I think.
Q. And this shirt?
A. That shirt is one of ours.
Q. And this one (indicating)?
A. Yes, sir.
Q. That is, in fact, all of the exhibits here excepting these samples of clol-red cloth—this roll and the samples that we put in; all the rest came from the Norfolk & New Brunswick mill, did they not?
A. No; these did not. All the samples that came from our mill are marked.

Counsel for importers offers in evidence a sock.

Objected to as not belonging to the class of goods under consideration or manufactured in a similar manner.

Counsel for importers states that he offers the sock in order to test the meaning of the witness' testimony and his qualifications as an expert.

141 The sock is marked Exhibit No. 11.

Adjourned to Thursday, March 26, 1891, at 11 a. m.

142 Hearing resumed March 26, 1891.

JAMES C. COOLEY sworn and examined as a witness for the collector:

By Mr. PLATT:

Q. What is your business?
A. Dry goods commission business.
Q. For how many years?
A. Some 15 years.
Q. Dealing in what line of goods?
A. In cloths and underwear. Those are the two lines that we are largely interested in, being the agents of eight or ten mills.

By Mr. COUGHTRY:

Q. I beg pardon; what goods?
A. Woolen goods, woolen cloths, and underwear.
Q. What firm?
A. Knower & Cooley, 24 and 26 Thomas street.

By Mr. PLATT:

Q. And for how many years?

A. About 15 years, more or less.

Q. During that time your dealings have been somewhat large, I suppose?

A. Yes, sir.

Q. And during that time have you become familiar with the terms used in the trade in buying and selling such goods?

A. The usual terms; yes.

Q. I show you Importers' Exhibits 1 and 2—shirt- and drawers. Have you dealt in articles of that nature?

A. I have.

Q. By what name in the trade and commerce of this country prior to October 1, 1890, were such goods known?

A. Underwear, undershirts and drawers.

Q. I show you the importers' other exhibits—socks and stockings and union suit.

A. We have never had these goods.

143 Q. You do not deal in stockings?

A. No.

Q. Have you dealt in this style of union goods?

A. No. Our consignments are confined to underwear and underclothing, in both men and women's goods.

Q. I show you Importers' Exhibit No. 3. Have you dealt in such goods as those?

A. No.

Q. Was there prior to October 1, 1890, any difference in the meaning of the term "fabric" and "knit fabrics" in the trade and commerce of this country than its ordinary meaning in common speech?

A. No difference that I know of.

Q. That was and is a descriptive term and not a trade term?

A. Entirely so, I should say.

Q. And referring to what?

A. A knit fabric would refer to a piece of stockinet or knit cloth, as we term it. The fact is—if I may go on in a conversational way—when I resigned from the army some years ago I started in a mill called a stockinet mill, and they used to sell cloth, as they termed it then, this stockinet cloth, to the people about the country for manufacturing into garments. There was quite a trade. Not only that, but storekeepers came and bought this cloth, this fabric, to make into garments.

Q. Bought and sold by the yard or piece?

A. Sold by the yard.

Q. Are such goods illustrated by sample H?

A. Yes, sir; that class of goods.

Q. Exhibit M?

A. That same shape; yes.

Q. Those goods were bought and sold by the yard or piece?

144 A. Yes, sir.

Q. Did you ever deal in such goods at that time or any other represented by Exhibit Q?

A. No; we did not. I should say that was a worsted fabric.

Q. That is a knitted fabric.

A. A knitted fabric made of worsted yarn.

Q. Sold by the yard?

A. Sold by the yard. While I have never dealt in it, it looks like the same thing that we make cloaks of.

Q. Look at Exhibit K and state, if you know, what those samples represent.

A. Those are samples of a sort of Jersey cloth of knit fabrics.

Q. Bought and sold by the yard and piece?

A. Bought and sold by the yard. Many of the retail shops keep this vlass of goods.

Q. From which garments are made?

A. From which garments are made.

Q. In the trade and commerce of this country prior to October 1, 1890, was there any trade meaning to the term "clothing" other or different from its ordinary meaning as used in every-day speech?

A. My opinion is that there was not.

Q. "Clothing" is a descriptive term, is it not?

A. A descriptive term.

Q. And not a trade term—that is, there is no different meaning in trade of the word clothing than in ordinary speech?

A. I should say not. That would be my understanding as an individual.

145 Q. And by the term "clothing" what is meant or included in trade or in common speech?

A. If a man should come to my place and ask me where he could obtain a suit of clothes I should probably tell him to go down to Rogers & Peet; that we did not have them for sale. That would be probably the general acceptation of the term.

Q. Supposing he asked you for women's clothing, would you send him to Rogers & Peet?

A. I might send him up to Arnold & Constable's shop.

Q. You would send a man who asked for men's clothing to Rogers & Peet's place?

A. Yes, sir.

Q. I did not say men's clothing. I referred to the general term "clothing." The tariff says "clothing, ready made," not "men's clothing, ready made." As you understand it the term "clothing" refers generally to a large class of articles?

A. Yes, sir; certainly; everything that I have on is clothing. I may have a trunk full of clothing. It need not necessarily be my coat or waistcoat or trousers.

Q. Do you understand that it would cover such articles as represented by Nos. 1 and 2?

A. I do in a generaly way. In a broad sense it would not.

Q. There are various kinds of clothing; men's clothing and women's clothing.

A. Yes, sir; you are speaking of the general term, and there is

no doubt about it, I suppose, in every man's mind. Clothing covers everything that a man wears.

Q. There is men's clothing, women's clothing, children's clothing, outside clothing, and underclothing.

A. And horse clothing.

146 Q. It covers a large variety of goods?

A. Yes, sir.

Q. Did you ever know in the trade and commerce of this country prior to October 1, 1890, articles represented by Exhibits 1 and 2, drawers and undershirts, to be bought and sold and billed as knit fabrics?

A. Never; probably they never were. I don't suppose any man ever saw that.

Q. There is no such trade term?

A. No such trade term. I fancy the term never was used. I presume you could not find a man who would swear that such a term was used.

Cross-examination by Mr. COUGHTRY:

Q. Do you sell overcoats, vests, and trousers?

A. No.

Q. Or buy them excepting for your own use?

A. No.

Q. Do you know whether there are goods known as woolen and worsted cloths?

A. I do; yes.

Q. Are they specially provided for in the tariff?

Objected to. Question withdrawn.

Q. Look at sample Q. Please tell me if that is cloth.

A. It is knit cloth; yes.

Q. It is a cloth?

A. It is a cloth; likewise it is a fabric.

Q. Do you deal in imported or domestic goods, or both?

A. In domestic goods purely.

Q. Are your goods the product of the New Brunswick Knitting Company, the American Hosiery Company, the New Britain Company, or the Medlicott Company?

A. We are the agents of the Medlicott Company.

147 DANIEL MACKAY sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?

A. Hosiery.

Q. How long have you been engaged in that business?

A. Somewhere near fifty years.

Q. What is your house?

A. Charles Nourse & Co.

Q. Where is their place of business here in the city?

A. 37 Walker.

Q. In the course of your business have you become familiar with such articles as are represented by Importers' Exhibits 1 and 2, shirts and drawers?

A. Yes, sir.

Q. Under what name in the trade and commerce of this country, prior to October 1, 1890, were such goods bought and sold?

A. Knit shirts and drawers.

Q. Have you dealt also in socks and stockings?

A. Yes, sir.

Q. Such as represented here by the importers' other samples?

A. Yes, sir.

Q. Such articles as are represented by Exhibit 12?

A. All such; yes, sir.

Q. Under what trade names were such goods as those bought and sold in trade and commerce prior to October 1, 1890?

A. According to the material, the component parts of them: Merino, cotton, wool, or silk, as they may be. Cotton half hose, merino half hose, cashmere half hose, wool half hose, camel's hair half hose.

Q. And what is the trade name of this article, No. 12?

A. That s-ould be known as a union dress, union suits.

Q. To what use are all goods represented by those samples
148 put?

A. This is underwear.

Q. Is there anything there that is not worn on the person?

A. No, sir.

Q. They are all for the purposes of wear, are they?

A. Yes, sir.

Q. Either for men, women, or children?

A. Yes, sir.

Q. In all your experience did you ever know those articles in the trade to be billed or bought and sold under the name of knit fabrics?

A. I have never known them to be done, sir; not in this form.

Q. Was there prior to October 1, 1890, any technical trade meaning, other and different from its ordinary meaning, of the word "fabric"?

A. No; I think not.

Q. It meant the same thing in trade as it does in ordinary speech?

A. Yes, sir.

Q. And the same is true, I suppose, of the words "knit fabric"?

A. There would be possible a distinction known by the old buyers between a knit fabric and a woven fabric. We have goods that we handle that are made of knit cloth or woven cloth.

Q. One is made of a knit fabric and the other of a woven fabric?

A. Yes, sir.

Q. But after they come into the shape of completed articles such as those, they are all sold under the names of shirts and drawers and underwear?

A. Underwear, socks, stockings.

Cross-examination by Mr. COUGHTRY:

Q. Do you deal in overcoats, coats, vests, and trousers?

A. We deal in coats similar to the coat there, Exhibit O.

149 Q. Is that called a coat?

A. That is called a Jersey coat.

Q. Do you deal in foreign or domestic goods?

A. Foreign and domestic both.

Q. Are you connected with any of these knitting companies or hosiery companies?

A. No, sir.

Q. Do you handle their goods?

A. I have handled almost the hosiery of the first mills that were built in the country.

Q. As an agent?

A. No; not as an agent, only as a jobber.

Q. Which is the larger part of your business; in foreign or domestic goods?

A. I think the largest percentage at the present time is domestic; has been for a number of years. Formerly it was seven-eighths, about; at the present time it is about seven-eighths the other way.

Q. Very little imported?

A. Comparatively.

By Mr. PLATT:

Q. You have bought and sold all this class of articles in your business?

A. Yes, sir.

Q. During all these years?

A. Yes, sir.

FREDERICK W. BROOKS sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. You are a clerk in the custom-house?

A. Yes, sir.

Q. Have been for how many years?

A. About twenty years.

Q. Are you familiar with invoices and entries and other custom-house entries?

A. Yes, sir.

Q. I show you the entry and invoice in suit. Will you

150 look at those and state in the first place how the goods in suit are invoiced; under what name?

A. I should have to see the protest to determine that question. The protest refers specifically to case 6478, in which the goods are invoiced as "ladies' Vicuna llama hose" and "men's Vicuna llama half hose;" "fancy men's half hose, embroidered;" "men's fancy merino half hose, embroidered;" "fancy mixed llama shirts, Avondale." In case 6479 the goods are described as "men's fancy mixed llama shirts, Avondale;" also as "trousers;" and there is one line

here "men's black cashmere pantalets, L. legs"—long legs. Then there are "boys' merino shirts;" "ladies' merino dresses;" "children's merino three-quarter hose;" "children's merino hose;" "black cashmere hose." Those appear to be all in 6565. Those are all the cases specifically mentioned. The protest states "all other similar merchandise embraced in the importation." I shall have to go through the invoices. In case 6568 there are "black cashmere hose." Those appear to be all.

Q. Those are all that are covered by that protest that appear in the invoice?

A. Yes, sir.

Q. You do not find in terms any "knit fabrics" mentioned on the invoice?

A. Not as the invoice description.

Q. The invoice nowhere describes these goods as knit fabrics?

A. No.

Q. Now, will you look at the entry and see how these goods are entered?

A. Case 6478 as described in the entry is "1 case of woolens." Case 6479 the same description. Case 6565 is described as partly silk hose (to which the protest does not refer), partly cotton
151 hose and woolens. The other goods in the case are samples to which the protest does not refer. Case 6568 is described, that portion to which the protest refers, as "and woolens."

Q. Is the usual oath on that entry?

A. Yes, sir; this is the oath that the goods covered by this entry have been purchased by the importers.

Q. Are any of these goods entered as "knit fabrics"?

A. No, sir.

Cross-examination by Mr. KETCHUM:

Q. I understand you to say that you did not see any articles mentioned as knit fabrics or "as such," I think were the words?

A. Invoiced as knit fabrics?

Q. Do you find any kind — fabrics on the invoice?

A. Do you refer to those words?

Q. That is my question.

A. I am not competent to answer the question. I am not an expert as to whether the goods are knit fabrics or not.

Counsel for the collector offers in evidence the entry and invoice of certain goods entered by Arnold, Constable & Co. by the steamer Alaska, October 15, 1890; entry No. 168,490; invoice No. 12334.; protest No. 16453.

GEORGE H. SUTTON sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?

A. I am in the hosiery business and underwear.

Q. For how long have you been engaged in that business?

A. Over 25 years.

Q. What is the name of your concern now?

152 A. Catlin & Co., 216 Church street.

Q. What line of goods have you dealt in in these years?

A. Entirely domestic; both what is known as cut goods and fashioned goods; in hosiery and in underwear.

Q. Have you bought and sold those goods to a large extent during these years?

A. We have sold them to a large extent.

Q. During the course of your experience have you become familiar with such articles as are represented by Importers' Exhibits 1 and 2, shirt and drawers?

A. Yes, sir.

Q. By what name in the trade and commerce of this country prior to October 1, 1890, were goods represented by those samples bought and sold?

A. Underwear, shirts, and drawers.

Q. Are you also familiar with the importers' samples here, such as stockings and socks and union suit?

A. I have known that as a union suit (referring to sample); half hose, ladies' hose, or the general term hosiery.

Q. Are those the trade terms in use for such articles?

A. As far as I know.

Q. During the course of your experience did you ever know those articles to be billed or bought and sold in the trade under the name of "knit fabrics"?

A. No, sir.

Q. Have you ever dealt in articles represented here by Exhibit O?

A. No, sir.

Q. Have you ever dealt in articles represented by sample Q?

A. No, sir.

153 Q. Or L?

A. Yes, sir.

Q. Under what name were goods represented by sample L sold in trade and commerce?

A. Stockinette.

Q. Bought and sold by the yard and piece?

A. Yes, sir.

Q. Are you familiar with such articles in your trade as are represented by Exhibit K?

A. I have never handled any like those.

Q. Had the term "fabric" in the trade and commerce of this country prior to October 1, 1890, any different meaning than its ordinary meaning in every-day speech?

A. Not as far as I know.

Cross-examination by Mr. COUGHTRY:

—. ——.

A. Entirely domestic, both regular and cut.

Q. What factories do you represent?

A. Do you wish the list?
Q. Yes.
A. Oak Mill Company, Union hosiery mills, Frankfort hosiery mills, Broadalvin, Dudley mills, and several small concerns.
Q. You are agent for these concerns?
A. Yes, sir.

Redirect examination by Mr. PLATT:

Q. You speak of regular and cut goods. Will you give us the distinction?
A. Cut goods are usually made on a cylinder and finished by a sewing machine. Regular goods are usually knit on flat work and narrowed and widened and either hand or machine seamed.
Q. Is this the advertisement of your house in the Commercial Bulletin (handing witness a paper)?
A. That is the concern.

154 The paper shown witness contains an advertisement which is marked "For identification F. M. A."

Q. Has there been any difference in the use of the trade terms in the hosiery trade during all the time that you have been in it?
A. I don't recall any at this moment.

WILLIAM A. MCLACHLAN sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?
A. I have been a buyer of dry goods since 1852 in this city.
Q. Where is your place of business?
A. 338 Broadway, New York.
Q. What class of goods have you dealt in?
A. Almost every class of goods that has been sold in a dry-goods store. It is a general dry-goods store.
Q. Have you bought and sold such articles as are represented by the Importers' Exhibits 1 and 2—shirts and drawers?
A. Yes, sir.
Q. Also their other exhibits—hose, half hose, and union garment?
A. Yes, sir.
Q. Have you dealt during those years in foreign or domestic goods or both?
A. Both kinds.
Q. Can you tell us by what name prior to October 1, 1890, such goods as are represented by those samples were bought and sold in the trade and commerce of this country?
A. These have always been sold as shirts and drawers and as ladies' stockings, men's half hose, and children's three-quarter hose.
Q. And the union suit—what was that called?
A. That is a union suit.

155 Q. Bought and sold under what name?
A. Union suits.

Q. Did you ever know in the course of your long experience articles represented by those samples to be billed or bought and sold in the trade under the name of "knit fabrics"?

A. I never have.

Q. Prior to October 1, 1890, did the term "knit fabrics" have any other or different meaning in the trade than in ordinary speech?

A. Not that I am aware of.

Q. I show you Exhibit K.

A. These are all knit goods with the exception of one. I am not certain about one of them.

Q. Have you dealt in such goods?

A. Not exactly like these samples; no, sir.

Q. Have you dealt in any knit cloth bought and sold by the yard?

A. Yes, sir; several kinds.

Q. Will you name what kinds of knit cloths bought and sold by the yard or piece you have been familiar with?

A. Stockinet cloth, something like Exhibit M, in white and in colors, known in the market as stockinet. They come in different widths.

Q. Exhibit Q; have you dealt in anything like that?

A. That is a Jersey cloth; yes.

Q. Exhibit L?

A. That is a Jersey cloth manufactured a little different.

Q. Have you any other samples with you of knit cloth that is bought and dealt in by the yard—piece goods?

A. Yes, sir.

Q. Will you please produce them—that you have bought and sold during these years?

A. That kind (producing three samples).

156 Q. Are these three samples produced by you all knit cloths?

A. Yes; they are all knit, but they are knit by a different process. That one (referring to pink sample) is made on a revolving loom, the brown one is knit on a flat loom, and the black one on a cylinder loom. The two former samples are generally known as eider-down, and the other is a tweed.

The three samples produced by the witness are offered in evidence and marked Exhibit R.

Q. Now, I will call your attention to one of the three samples marked Exhibit R, the black one. That is in the form of cloth, is it?

A. Yes, sir; it comes in cloth.

Q. Bought and sold by the yard?

A. It is sold by the yard.

Q. What is its use?

A. It is used for ladies' jackets generally.

Q. Outside wear?

A. Yes, sir; outside wear.

Q. The fabric of that is not woven?

A. No, sir; it is knit on one of these circular looms or knitters or whatever you call them.

Q. For how many years have you known that in the market?

A. This is a recent thing.

Q. Prior to October 1, 1890?

A. I don't think I saw it before that.

Q. Never saw it prior to October 1, 1890?

A. No, sir.

Q. Where did you get it; out of your own store?

A. No; I have no store. I got it from the manufacturer.

Q. Made in this country?

A. This is made in Philadelphia.

Q. Do you know how long they have been making it there?

157 A. I do not, sir.

Counsel for collector withdraws the black sample from Exhibit R.

Q. Now, with regard to these two other samples, the brown and pink. How long have you known those in this market?

A. Those have been made for years.

Q. By what names were those two samples known?

A. Known as eider down.

Q. And the fabrics of those goods are knit, are they?

A. Knit.

Q. And they are bought and sold by the yard and piece?

A. Yes, sir.

Q. As to Exhibits M and Q and L, how long have those been well known in the markets of this county?

A. I should say about ten years or more.

Q. They are bought and sold and have been for years by the piece?

A. Yes, sir.

Q. And by the yard?

A. Yes, sir.

Q. They come as piece goods?

A. Sold by the yard; not by the piece buy by the yard, but they come in long pieces for manufacturing.

Q. And the texture is knit, not woven?

A. Knit on a revolving loom.

Q. To what use are those put?

A. Different purposes; ladies' Jersey waists, children's clothing, men's clothing—different purposes.

Q. Do they make ladies' skirts with them?

A. I don't know. I never saw them made into skirts.

Q. Have you ever seen that class of goods made up into

158 coats like Exhibit O, men's coats?

A. Yes, sir.

Q. That is an outside garment, isn't it?

A. Yes, sir; a man's coat.

Q. Made out of a knitted fabric, isn't it?

A. Yes, sir; that is made out of a Jersey cloth.

Q. And these riding pants, Exhibit P. Have you known such articles as that?

A. This is manufactured the same as the other.

Q. The same as the coat?

A. Yes, sir; it is heavier.

Q. What is the use of all these articles except the piece goods—these made-up articles—the shirts, drawers, socks, coats, pants, and so on, made of knitted cloth?

A. What do you mean?

Q. After they are made up into these completed articles to what use are they put?

A. They are sold as shirts and drawers.

Q. To what use do *epo*ple generally put them?

A. For wearing.

Q. Was there prior to October 1, 1890, any other or different meaning to the term wearing apparel in the trade and commerce of this county than its ordinary meaning in ordinary speech?

A. Not that I know of.

Q. What do you understand wearing apparel to mean in trade and in ordinary speech?

A. Wearing apparel means anything that a man wears.

Q. Or a woman wears?

A. Or a woman wears.

Q. Or a child wears?

A. Yes, sir.

Cross-examination by Mr. KETCHUM:

Q. What does underwear mean?

A. It means shirts and drawers.

159 Q. That is a particular kind of article that is worn, isn't it?

A. No, sir; it has been known as underwear ever since I bought dry goods.

Q. But it is different from outside wear?

A. Of course, it is a different thing?

Q. So, at least according to your theory, there are two kinds of wearing apparel, are there not—outside and inside?

A. No.

Q. Two classes?

A. Anything that is worn is wearing apparel.

Q. But you distinguish, nevertheless, between what is worn outside and what is underwear?

A. No.

Q. You do not distinguish at all?

A. No.

Q. They why did you call these goods underwear?

A. Which?

Q. The shirts and drawers?

A. I called them shirts and drawers.

Q. I thought you called them underwear?

A. No.

Q. Don't they ever go by the name of underwear?
A. They are called underwear or shirts and drawers.
Q. I thought you said so.
—. They are one and the same thing.
Q. Now, I want to ask you about these two samples of stuff—the brown sample and the pink sample. What did you say the brown sample was?
A. I call it eider down.
Q. I see there is considerable down on it?
A. I call the other the same name, too, but at the same time I suppose they were made by two different processes.
Q. The back is made by what processes?
A. That is made, as I said in the first place, on a flat loom
160 and the other is made on a revolving loom.
Q. Then it is woven, isn't it?
A. No; that is knit on a flat knitter and this on a revolving.
Q. Now, I am only talking about the brown sample—the back of it. The part of the back which we see first exposed here is made on what you call the flat knitter? Is that right?
A. Flat knitter; yes.
Q. What other process is resorted to in making this article?
A. Of course, it goes through the process of manufacture, of combing——
Q. I want to know the different parts. There is a back, which is made of thread, which looks in a zigzag shape. There is underneath another part. Then there is the down on the top. I want to know how you produce those effect-—what the processes are.
A. I do not say that I manufacture the goods. I only tell you that it is a fabric.
Q. Then you don't know?
A. I did not say that.
Q. I thought you spoke from knowledge.
A. No, sir; I said it was a knit fabric.
Q. Then you don't know whether it is or not?
A. It is said to be.
Q. Is it knit all through?
A. It is all made by one process.
161 Q. How, then, is the down produced?
A. It is combed after it is produced.
Q. Do you mean to tell me that that silk thread on the back of that article is all there is of it, and that the down is produced from that?
A. No, sir; there is wool on one side and cotton on the other.
Q. Do they work them together—at the same time?
A. Certainly.
Q. In the same machine?
A. Yes, sir.
Q. You are confident of that, are you?
A. Certainly.
Q. Have you seen the machine work?
A. I never saw it work.

Q. How do you get your knowledge?
A. From the manufacturers.
Q. You have not been a manufacturer?
A. No, sir.
Q. Has anybody ever told you about it—how they made it?
A. Of course.
Q. I don't know why "of course." I only ask you. Would you call this a pile, this downy surface on top?
A. That is what they call eider down. It is combed up.
Q. It makes a pile on the top of it, doesn't it?
A. Yes.
Q. Is there any sample on this table that corresponds in any respect with that article?
A. No, sir; I don't think there is.
Q. Is there anything on these tables that corresponds in any respect with the pink sample?
A. No, sir.

Recess.

162 Redirect examination by Mr. PLATT:

Q. I show you some samples of merchandise and ask you whether you are familiar with those, or merchandise represented by those samples, in the trade and commerce of this country prior to October 1, 1890.
A. Yes, sir.
Q. How were they bought and sold—in what form or shape?
A. They were sold by the yard.
Q. Piece goods?
A. Generally known as stockinet.
Q. And to what use were they put?
A. To various uses; generally to manufacturing shirts and drawers. They are the same as that (indicating a sample), only a little lighter goods.
Q. In what way are they manufactured into shirts and drawers?
A. They come in tubular shape, the same as that for shirts. They vary in size according to the size you want. The loom or knitter makes the size of the body of the shirt. Then they are cut off the regular length of a shirt and put together at the neck—sewed together—a piece cut out for the neck. They are bound, with a piece set in front, as a general thing; sometimes they are called self-fronts. Then it is a piece of cloth the same as the fabric they are made from, and the sleeves are cut from another piece of goods and sewed in.
Q. Are those what you call cut goods?
A. Yes, sir.
Q. As distinguished from the regular made?
A. Yes, sir.
Q. In other words, the cloth or fabric is already made and cut according to the pattern?
A. Yes, sir; and in the case of drawers the drawer is cut out from

the pattern the size of the drawer, whether they want a 34 or 36 or 38 inch band, and the seams are sewed by a sewing machine
163 or by hand. A majority of the goods made in this country are made in that way—on circular looms or knitters.

The samples shown to the witness are offered in evidence and marked S.

Cross-examination by Mr. KETCHUM:

Q. The goods represented by the samples which have just been shown you, how did you call them?
A. They are called stockinet.
Q. Are they cloths?
A. They are a knit fabric.
Q. Are they cloths?
A. They come by the yard.
Q. Are they cloths? Yes or no.
A. Properly speaking, they are not cloths.
Q. Improperly speaking?
A. They are knit goods, and are sold by the yard, or manufactured and cut up. When they are sold they are sold by the yard.
Q. Do they come with selvages?
A. No, sir; they do not.
Q. Do they come in lengths of parallel limitations?
A. What do you mean by that?
Q. As to width, are they the same width all through?
A. The same size; yes.
Q. Not the same sizes, the same widths?
A. Didn't I say in the first place that they came in different widths?
Q. I want to ask you, do these goods come in cylindrical shape, that may be laid down flat, or do they come in pieces, if you please, like silk, which has edges?
A. They have no edges; for the shirts they have not; they are made up as you see there. They come the width of the body of the shirt.
Q. They come in cylindrical shape?
A. Yes.
Q. For drawers, how do they come?
A. They are cut out of the same goods.
Q. Then, in any event, these goods come in a cylindrical
164 form?
A. They are made in that way; yes.
Q. All of them? All of the goods that are represented by the samples that have just been shown to you?
A. They are made in that form; yes.
Q. All of them?
A. Yes; until they are cut.
Q. I ask how are they made?
A. Haven't I told you that the shirt came in a cylindrical form,

the size of the body of the shirt, and cut across the piece, the length of the shirt, then they are sewed?

Q. I ask as to these goods in their primary condition as they come from the machine. They are all made, as I understand you, in the cylindrical form?

A. Yes, sir.

Q. What do you call that article so manufactured?

A. I say it is called stockinet.

Q. Is it a knit fabric or is it not a knit fabric?

A. It is a knit fabric. It comes from the knitter.

Q. It is a knit fabric?

A. Yes, sir.

Q. You are certain about that?

A. Yes, sir; I have seen it made, and I ought to know something about it.

Q. Is it a cloth or is it not a cloth? Now, answer me that, yes or no.

A. It is not a cloth.

Q. It is not a cloth?

A. No, sir. It is——

Q. That is enough. You have said it is stockinet, and you now say it is not a cloth? You have spoken about goods that were cut goods. Now, would you be kind enough to tell us which of the samples of the importers now before us here on the table are cut goods and which are not cut goods?

A. Yes; I think I should tell you. Sample 1 is what is termed a regular made article.

165 Q. Are those cut goods?

A. No, sir; they are not. Sample 2 is termed regular-made goods.

Q. Sample 2 is not cut goods?

A. They are not cut goods.

Q. No. 3; are those?

A. That is partly cut.

Q. How much cut and how much otherwise?

A. This part is regular.

Q. That is, the leg?

A. Yes, sir.

Q. The legs are regular?

A. Yes, sir.

Q. What part is cut?

A. This part.

Q. The crotch?

A. No; the seam.

Q. The seam?

A. Uniting the two parts together.

Q. The two parts of the body?

A. Yes, sir.

Q. How is that article known in trade; as cut goods or regular?

A. This probably would be known as part regular and part cut.

Q. Take the whole thing in the aggregate; how would you sell it?

A. It would not be regular.
Q. How would you sell it?
A. I could not sell it as regular made.
Q. I don't ask how you could sell it; I ask how you would sell it. How would you class it if I came here as a customer engaged in that business?
A. I would call it partly cut and partly regular. You cannot call it any other way.
Q. You would call it so?
A. Certainly I should.
Q. You would not call it regular goods?
A. I should not call it regular-made goods; no; not fully.
Q. Not fully? I want to know how you would answer me for the benefit of your business.

166 A. That seam is a cut seam.
Q. How would you answer me if I came into your store as a purchaser of such goods; would you call those regular goods or cut goods?
A. I should not call it either; it is between the two.
Q. Then I accept your statement.
A. One is cut and the other is not.
Q. What proportion does the regular part bear in value to the cut portion?
A. I am not a manufacturer.
Q. That settles that. Now take the next number, No. 4, drab stockings; are those regular or cut? How are they known in the trade?
A. They are known as stockings or hosiery.
Q. Are they known as regular goods or cut goods?
A. They are regular.
Q. Sample 5, black stockings?
A. Regular.
Q. Are they dyed in the piece or in the yarn?
A. It can be done either way.
Q. They can be, but how are they?
A. I should judge it was dyed in the piece.
Q. Do you know? Can you tell from any experience you ever had?
A. No, sir.
Q. You are not a manufacturer?
A. I am not a dyer.
Q. You are not a dyer or a manufacturer?
A. No, sir.
Q. You simply guess at it?
A. No, sir; I do not guess at it; it is my experience in buying goods; that is all.
Q. Can you tell an article that is dyed in the piece from an article which is dyed in the yarn?
A. No; I cannot always.

167 Q. No. 7. What would you say of that article? Is that regular or cut?

A. This is regular.

Q. Is that dyed in the yarn or in the piece?

A. I should think that was yarn dyed.

Q. Now, would you be kind enough to tell us how to distinguish between an article which is yarn-dyed and an article which is piece-dyed?

Objected to as irrelevant.

A. We generally tell by the appearance of the goods.

Q. What is the appearance of that sample differing from the appearance of the last sample that you examined?

A. It seems to come up brighter in color.

Q. A brighter color?

A. Yes, sir.

Q. And where the color comes up brighter your idea is that the goods must have been dyed in the yarn?

A. No; that does not follow.

Q. That is dyed in the yarn?

A. Yes, sir.

Q. Because the color comes up brighter?

A. It is the general appearance of the color.

Q. That is the basis of your opinion?

A. Of course, it is impossible for me to tell. I don't believe any other man can tell.

Q. Then you ought really to say that you don't know?

A. No; I do not say that, but I say it is my opinion that it is yarn-dyed.

Q. It is simply an opinion, then?

A. From the general feeling, the fineness of the fabric.

Q. No. 8. Is that regular goods or cut goods?

A. Regular.

168 Q. No. 9. Is that regular or cut?

A. That is regular.

Q. No. 10. How about that?

A. This is not full regular.

Q. In what respect are they cut goods?

A. I don't say they are cut goods. In the manufacture they are made different from the others, the seams are.

Q. Would they be known in the trade as cut goods or regular goods?

A. They would probably be sold as regular goods, but they are not full regular. They are dyed in the yarn.

Q. You remember those socks for infants that you saw this morning?

A. Yes; I saw them.

Q. Could you tell us whether those were regular goods?

A. I could not without seeing them once more.

Q. That union garment that you have before you, is that regular or cut?

A. It is not full regular.

Q. Would it be sold in trade as regular or as cut?

A. I hardly think it would be sold as full regular.
Q. In what respect is it cut?
A. This is cut here (indicating).
Q. At the sleeve?
A. This is sewed on.
Q. You refer to that fringe to the shoulder-strap or border?
A. Yes, sir; some part of it is regular made, others are cut.
Q. Is there anything cut besides the border to the shoulder-strap?
A. At the side I should think it was cut.
Q. Do you know whose manufacture that union garment is?
A. I know what it says on here.
Q. What does it say on there?
A. Cartwright & Warner.

Q. Do you deal in Cartwright & Warner's goods?
169 A. I have bought them; yes, sir.
Q. Do you deal generally in them?

A. I have bought them for years, more or less.
Q. Then you continue to deal in them?
A. Certainly.
Q. Do you import any of them?
A. No, sir.
Q. Do Cartwright & Warner send any cut goods to this country?
—. I never have bought any; I have only bought regular goods.
Q. And so far as you know, the productions of Cartwright & Warner are always regular goods?
A. That has been my experience in buying.
Q. You know nothing to the contrary of that—that has been your experience?
A. That has been my experience.
Q. Do you know Morley's goods, imported by James McCreery & Co.?
A. I have seen them; yes, sir.
Q. Have you dealt in them—bought and sold them?
A. I don't think I have.
Q. Do you know whether their manufacture is of cut goods or regular goods?

Objected to. Question withdrawn.

Q. Have you a business knowledge of Morley's goods in connection with your application as a proposed purchaser of goods?
A. I have some kinds of goods—say, for instance, half hose or socks.
Q. But not in shirts and drawers?
A. No; I don't think I ever bought any shirts and drawers.
Q. You don't know that you ever asked for a sale of shirts and drawers of Morley's?
A. Not that particular make; no, sir.

Q. Have you ever seen any goods of Morley's that were
170 not regular goods within the past five years?
A. I don't know that I have.

Q. Have you explained to us what you meant by the phrase

"regular goods" and by the phrase "cut goods;" if not, won't you explain it?

A. Regular goods are made—are knit, so they go together, and are united by hookers or crocheted together so as to form a seam without leaving any raised part; it makes a regular seam.

Q. Now, how are the cut goods?

A. Cut goods are sewed on a machine; sometimes by a machine and sometimes by hand.

Q. Cut out by a scissors or a knife?

A. Cut out by a knife generally; cut in forms, regular shape, and then they are sewed together.

Q. They are made of a piece or strip of cloth?

A. Something like that (indicating).

Q. A strip of knit cloth—that is what you mean?

A. They are cut from pieces.

Q. From a flat piece?

A. No; I do not say a flat piece; from these tubular goods; they are made in that way.

By Mr. COUGHTRY:

Q. Look at Exhibit 11 and tell us what they are, regular and cut.

A. These are regular.

Q. No doubt?

A. No, sir.

By Mr. PLATT:

Q. Were you ever engaged in the manufacture of these goods?

A. I never was.

Q. You do not profess to be an expert as a manufacturer?

A. No, sir; I do not.

Q. This stockinet that you have referred to, is that bought and sold by the yard?

—. It is sold by the yard. When it is sold on the market it is sold by the yard always. I won't say it is always sold by
171 the yard, but usually by the yard.

Counsel for collector produces a copy of the Dry Goods Economist, being, as he states, an exhibit that was before the board of general appraisers in this case, in which, on page 11, there appears an advertisement of Arnold, Constable & Co., and calls attention to the fact that the date of the paper is January 17, 1891, being after the passage of the present tariff act.

Counsel for importers claims that this paper was not introduced in evidence before the board of general appraisers.

Counsel for collector reads in evidence from Spons' Encyclopedia of the Industrial Arts, Manufactures, and Commercial Products, referred to in the decision of the board of general appraisers in this suit, on page 1187, as follows:

"Hose made from woven fabrics remained in general use until comparatively a recent time. Woolen cloths, being common and possessing other merits to recommend them, were most naturally

adapted for this purpose. Plenty of evidence exists to show that hose of this description was in general use down to the close of the 16th century, when it began to be superseded by the knitted article, which from its superior adaptability after its introduction soon won universal favor."

Counsel for importers objects to reading extracts from the articles in question, and claims that the entire article should be put in, if any.

The referee states that counsel for importers will be per-
172 mitted to introduce any portion of the articles in question which counsel for collector does not introduce.

Counsel for collector also reads from page 1190 as follows:

"Hosiery as generally understood and as considered here is a production of the art of knitting, a subdivision of the greater art of weaving. It is a process by which a series of loops are made to intersect each other, the aggregate forming a web. It can be executed by hand, by machines wrought by manual power, and by others in which steam is employed as the motor."

Also, on page 1193, as follows:

"It is well to premise here that stockings are not usually completed on one machine, the ribbed top being made on one frame, the leg on another, and the foot on a third, the different parts being joined subsequently."

Also, on page 1194, as follows:

"The ribbed top of half hose, bottoms of drawers, and sleeves of shirts are made separately from the other portion of the fabric, and in the common sort are subsequently attached by a sewing machine. In better goods they are ingeniously united by a turning-off frame."

Also, on page 1197, as follows:

"Of late the demands of fashion have led to the adaptation of the knitting machine to the production of wide looped fabrics composed of wool, which may be finished as woolen cloth or otherwise, so as to preserve on the front the characteristics of a knitted cloth. The advantage such a cloth possesses over an ordinary woven web is its greater elasticity and equality of strength in each direction. The stockinet machine on which this class of fabric is produced
173 is illustrated in figure 880. A tubular cloth knit upon this frame would be 105 inches wide, but owing to the shrinkage when taken from the machine this would be reduced one-third, a shrinkage which applies to all machine-knit fabrics. The great capacity of production attained on the stockinet machine in making wide woolen fabrics almost impels the conclusion that for many purposes it may in the early future supersede the ordinary loom."

Also on page 1198 as follows:

"All frame hosiery, whether of the best or low qualities, requires more or less mending and finishing by hand, sewing machine, or looping frame, by which the joining of the parts is effected more neatly than by the other ruder processes. These finishers are usually women and girls, who are denominated menders or seamers."

Counsel for the collector also offers in evidence Sheldeon's Buyer's

Reference Book for 1888 and 1889, containing numerous advertisements, among others that of Frederick Vietor & Achelis, on page 207 of 1889 book, importers and commission merchants, foreign and domestic goods, silks, satins, velvets, cloakings, woolens, plushes, dress goods, hosiery, gloves, ribbons, silk handkerchiefs, shirts, and drawers, blankets, upholsteries, American cotton goods; also numerous advertisements in which underwear and shirts and drawers appear.

Counsel for collector offers in evidence the definition of the word "fabric" from Knight's American Mechanical Dictionary as follows:

"A cloth made by weaving or felting. The various names are derived from the material, texture, fineness, etc."

174 Also from the Century Dictionary the definition of the word "fabric" as follows:

"A woven or felted cloth of any material or style of weaving; anything produced by weaving or interlacing, distinctively called textile fabric."

Also from L. Decolange's Dictionary of Commerce and Manufactures the definition of the word "fabrics" as follows:

"The texture or structure of a manufactured article; cloth of any description or of any material made by weaving or felting."

Also from the Encyclopædia Dictionary the definition of the word "fabric" as follows:

"A cloth made by weaving or felting."

Also from Webster's International Dictionary the definition of the word "fabric" as follows:

"That which is fabricated; cloth of any kind that is woven or knit from fibres, either vegetable or animal; manufactured cloth, as silks or other fabrics."

Also from the American Dictionary of Commerce the definition of the word "fabric" as follows:

"The texture or structure of a manufactured article; cloth of any description or of any material made by weaving or felting."

Also from the Commercial Dictionary of Trade Products, 1883, the definition of the word "fabric" as follows:

"The texture or structure of a manufactured article; the material of woven goods themselves; a building or erection; a frame or workship."

175 Also from the Manual of Commerce, by S. H. Browne, published in 1871, containing a concise account of the source, mode of production or manufacture of the principal articles of commerce, pages 108 and 109, as follows:

"In modern times wool is manufactured by the aid of machinery and a numberless variety of fabrics of every quality and price thrown into the market to be converted into articles of clothing for men, women, and children. The variety of fabrics formed of wool at the present day is so great that it would be impossible to enumerate or describe them. These change frequently in style and texture according to the prevailing mode or teste. Certain kinds of woolen

goods, however, are always in demand, such as broadcloths, merinos, flannels, shawls, etc."

Also from the same book, under the head of "alpaca wool," page 112, as follows:

"Fabrics made from this wool are called alpacas and are very glossy and handsome. It is often mixed, the warp being sometimes of cotton or silk, while the weft is of the alpaca wool."

Also from the same book, page 113, as follows:

"Formerly shoddy was used only for padding, but now blankets, carpets, table covers, etc., are made of it, as well as cloth, pilot cloth, and other fabrics for overcoats. Great improvements have been made recently, not only in the fabric of the cloth, but in the dyes. Felt is a kind of fabric resembling coarse woolen cloth."

Also from the same book, page 116, as follows:

"Damask.—This name was originally given to a fabric of silk."

Also from the same book, page 120, as follows:

176 "Satin.—Made by the woof passing over several threads of the warp at a time, presenting a very smooth, glossy surface. It is one of the most elegant of silk fabrics."

"Brocades.—Heavy silk on which are raised ornaments, flowers, foliage, etc. At present, fabrics which have figures or patterns raised or ornamented in this way are termed brocades."

Also from the same book, page 126, as follows:

"Lace is woven of cotton in webs as a fabric for dress; still lighter and more airy than muslin."

Also from the same book, page 135, as follows:

"Hosiery of all kinds is now made by machinery. It is either woven or knitted in a machine for the purpose recently invented. The articles are not so durable as those produced by hand, but they are cheaper and insure an immense market. The best hose are of English manufacture. A similar process produces the fabric called stockinet, of which undergarments are made."

Also from the same book, page 139, as follows:

"Tapestry is a kind of embroidered or woven fabric."

It is understood that counsel for the importers may read any portion of the definitions from which counsel for the collector has read extracts.

Adjourned to Tuesday, March 31, 1891, at —.

177 *In Re* ARNOLD, CONSTABLE & CO.

Hearing resumed March 31, 1891.

HENRY H. RICE sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?
A. I am an underwear buyer.
Q. Where is your place of business?
A. Milwaukee, Wisconsin.

Q. What house?
A. The J. H. Rice & Friedman Company.
Q. How long have you been engaged in dealing in underwear?
A. Twelve years.
Q. Does your house do a large business in underwear?
A. Yes, sir.
Q. To whom do they sell principally?
A. The retail dealers throughout the Northwest.
Q. I show you importers' samples 1 and 2. In the course of your business have you become familiar with articles of that nature?
A. Yes, sir.
Q. What are they?
A. That is underwear; full-fashioned underwear.
Q. In the trade and commerce of this country prior to October 1, 1890, under what name were such articles as those bought and sold?
A. Shirts and drawers or underwear.
Q. Look at the other samples—socks, stockings, and other articles there comprising the importers' exhibits of importations in this case. Are you familiar with such goods as those in your trade?
A. Yes, sir.
Q. Under what name were articles represented by those samples bought and sold in the trade and commerce of this country
178 prior to October 1, 1890?
A. Hosiery and union suits. I don't know exactly what this is—the black sample. It seems to be equestrian tights; it looks like that to me.
Q. They are worn by people who ride horseback?
A. I should suppose so. I never saw a garment of this description before.
Q. With the exception of that, you are familiar with the goods?
A. Yes, sir.
Q. Were articles represented by those samples ever bought and sold in the trade and commerce of this country prior to October 1, 1890, as "knit fabrics"?
A. No, sir.
Q. Was there any such trade term in the trade and commerce of this country prior to October 1, 1890, as "knit fabrics"?
A. No, sir.
Q. Those shirts and drawers represented by Importers' Exhibits 1 and 2—are they bought and sold together in the trade?
A. Usually, but the price is based on each article.
Q. And under what name?
A. Shirts and drawers.
Q. Are they ever sold as "suits"?
A. Not to jobbers. Retailers sometimes sell a shirt and drawer together and say so much for the suit.
Q. To what use prior to October 1, 1890, were articles represented by those samples put?
A. Wearing apparel.
Q. Exclusively?

A. I don't know of any other use.
Q. They have no other use?
A. No.
Q. In the course of your trade have you ever dealt in an article known as an outing shirt?
A. Yes, sir.
179 Q. I show you an article of wearing apparel and ask you how that was known in the trade and commerce of this country now and prior to October 1, 1890.
A. Jersey shirt.
Q. Is the fabric of which that is composed woven or knitted?
A. Knitted.
Q. To what use was an article represented by that put?
A. As wearing apparel.
Q. Outside?
A. Yes, sir.

Counsel for collector offers in evidence the outing shirt above referred to, marked Exhibit T.

Q. Had the term "wearing apparel" in the trade and commerce of this country prior to October 1, 1890, any different meaning in the trade than it had in ordinary use, common speech?
A. No, sir.
Q. And included all articles of clothing worn upon the person?
A. Yes, sir.
Q. Are these articles represented by the samples before you sometimes called underclothing?

Objected to as leading, the witness having already given the particular names by which the different articles are known and not having given the word underclothing as one of those names.

A. Sometimes.
Q. Are you a manufacturer? Do you know anything about the manufacture of such garments as are represented by such samples?
A. I am not a manufacturer, but I understand the making of them.
Q. Will you look at Exhibit T, that outing shirt? How is that made, in pieces and sewed together or all one?
A. Made on a circular frame.
180 Q. How is it put together?
A. After the body of it is knit it is taken off and cut and shaped and put together.
Q. How about the sleeves?
A. The sleeves are set in. They are made on another frame and cut down and set in the same as a shirt would be made out of a woven fabric.
Q. Have you dealt in the course of your business in underclothing made out of woven fabric, flannel, etc.?
A. Yes, sir.
Q. As I understand it, there is a class of underclothing—underwear—that is made out of other than knit fabrics?

A. Yes, sir.

Cross-examination by Mr. COUGHTRY:

Q. Do you deal in imported and domestic goods?
A. Yes, sir.
Q. Both?
A. Yes, sir.
Q. Which in the largest quantity?
A. Domestic.
Q. Very much the largest?
A. Very much the largest.
Q. What proportion are foreign goods, do you say; what percentage?

Objected to as immaterial.

A. I don't think that has any bearing on the case.
Q. That is not an answer to the question.
A. About one per cent.
Q. Do you buy your domestic goods or any considerable quantity from the Norfolk & New Brunswick Company?

Objected to as immaterial.

A. No, sir.
Q. From the American Hosiery Company?
A. No, sir.
Q. From what companies do you buy them?
A. Switz Condy, Oswego, manufacturers, through Mr. Talcott. Mr. Talcott is the selling agent.

181 Q. James Talcott?
A. Mr. James Talcott.

Q. What others?
A. I buy of Warner, De Forest & Co.
Q. Who is the agent?
A. I buy those direct.
Q. Where is their agency, in New York?
A. At Amsterdam; I believe they have a New York office.
Q. Do you know what mills they represent?
A. They are the manufacturers themselves.
Q. What others?
A. W. R. McHowett & Co.
Q. From whom do you buy the greater part of the domestic goods?
A. James Talcott.
Q. You say that your business is underwear?
A. Underwear and men's furnishing goods.
Q. Any retail?
A. No, sir.
Q. Only wholesale?
A. Only wholesale.
Q. What are your goods, the usual line of men's furnishing goods?

A. Yes, sir. I would like to change the answer to that question that you asked me with regard to the quantity of imported goods. I was thinking then only of underwear. I forgot altogether about the hosiery, which is a different department with us, and we handle probably three-fourths in cotton goods of foreign makers.

Q. But in woolen goods?

A. In woolen goods we handle very few, if any.

Q. Either in underwear or hosiery?

A. Either underwear or hosiery in foreign goods.

Q. Do you deal in coats, overcoats, vests, or trousers, such as are worn generally?

A. We manufacture certain coats, vests, pants, and outer garments for the lumbering trade and the far western trade, miners' trade, and cowboys.

182 Q. What are those goods made of?

A. Woven fabrics.

Q. Not knit?

A. Not knit.

Q. Do you deal in any goods for ladies?

A. I formerly did.

Q. In what kind of goods?

A. Ladies' underwear and ladies' hosiery.

Q. Did you deal in skirts?

A. Yes; years ago.

Q. And in chemises?

A. I don't remember; I don't think we did.

Q. Or drawers?

A. Drawers together with vests.

Q. I mean linen; I don't mean the woolen that are made in that way.

A. No, sir.

Q. Then in the muslin or linen underwear, or underclothing, rather—I made a mistake in the term—you did not deal in those goods?

A. Not for women; we did for men.

Q. Not for ladies?

A. Not for ladies in woven goods.

Q. You say you are not familiar with those goods (showing witness Exhibit 3)?

A. No.

Q. Do you deal in these (showing witness Exhibit 12)?

A. No, sir; I never handled those.

Q. But in these (showing witness Exhibits 1 and 2)?

A. Yes, sir.

Q. Do you know how they are made?

A. Yes, sir.

Q. What sort of a fabric is that?

A. That is a knit cloth.

Q. Knit cloth?

A. Knit fabric.

By Mr. KETCHUM:

Q. I notice you have used the word underwear here exclusively as a descriptive term in describing the samples one and two of the importers; and then in reply to a leading question from
183 counsel you said the articles were sometimes known as underclothing. Now why did you make those answers in that way?

Objected to as immaterial.

A. I did not have any particular point in it, no more than I would say "I am going in to buy a coat, vest, and pants" or "I am going in to buy a suit of clothes." The term underclothing is used, I believe, more among the consumers than in the trade. It is never used in the trade, that I can remember at present.

Q. Never is in your trade?

A. Underwear is about the idea.

Q. Yes; that is the name, unquestionably. Did any one ever come in and ask you for underclothing when he wanted underwear of this kind?

A. Sometimes they do. Lumbermen, mostly, that are not familiar with trade terms.

Q. I ought to say purchasers—experts familiar with this trade.

A. Experts would say underwear, I think.

Q. You never knew any one to say anything else, did you, when asking for such goods?

A. I cannot recall. I probably might recall an instance or two if I tried, but it is not the ordinary term.

Q. You do not remember any now?

A. Yes; I could remember it.

Q. How much of an effort would it require to remember such an instance?

A. I just happened to remember an order given for underclothing only a little while ago from lumbermen.

Q. Excuse me. You did not understand me. I did not refer to lumbermen. What would you call linen and cotton goods? Take a man's linen or cotton shirt or a woman's linen or cotton
184 skirt, what would you call them in your trade?

Objected to as irrelevant.

A. Underwear, I should suppose.

Q. Would you call them underwear?

A. Yes, sir; I think so; underwear or underclothing. I think the terms are synonymous.

Q. Let me ask you, as a matter of curiosity and for the information of us all, whether or not any distinction is ever made in the trade between the articles that are worn next to the body and those which are not worn next to the body, nor upon the outside, but intermediately.

A. I don't know. Probably I don't quite understand your question.

Q. I mean take the intermediate articles that lie between the knitted garment that goes next the body and the outside—in the case of a lady, the dress; in the case of a man, the coat, pants, and vest.

A. Do you mean what is intermediate?

Q. What would you call it? Take the linen shirt you have got on now, what would you call that?

A. I would call it a shirt.

Q. Would you call it underwear?

A. No.

Q. What would you call it?

A. I should call it a white shirt.

Q. Nothing but that?

A. Nothing but that.

Q. No other name for it?

A. Not that I know of.

Q. You would not even call it apparel?

A. It certainly is apparel.

Q. But you would not call it so. Would you call it a garment?

A. Yes, sir. If I were to buy one I don't believe I would call it anything but a white shirt.

185 Q. Would you call it clothing?

A. No.

Q. Would you call it underclothing?

A. No.

Q. Would you call it outer clothing?

A. I don't think I would call it anything but a white shirt.

By Mr. PLATT:

Q. You consider everything that a man wears on his person in the shape of a garment wearing apparel, don't you?

A. Yes, sir.

Q. Whether it is underwear or overwear?

A. Yes, sir.

186 JOHN W. DAY sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?

A. Underwear dealer.

Q. What house?

A. E. M. Ball & Co.

Q. In what class of goods does that concern deal?

A. In undershirts and drawers.

Q. Where is their place of business?

A. 45 Leonard street.

Q. How long have you been in the business?

A. 17 years.

Q. Do you deal in stockings and socks and articles of that kind?

A. None whatever.

Q. Only in undershirts and drawers?
A. That is all.
Q. Will you look at Exhibits 1 and 2, the blue shirt and drawers. Are you and have you been familiar with that description of goods?
A. Yes, sir.
Q. By what name prior to October 1, 1890, were they bought and sold in the trade and commerce of this country?
A. Shirts and drawers.
Q. Were such articles bought and sold in the trade and commerce of this country prior to October 1, 1890, under the name of knit fabrics?
A. No, sir.
Q. Had the term "knit fabrics" any other or different meaning in the trade and commerce of this country prior to October 1, 1890, than in ordinary speech? Did it mean anything different in trade from what it did in ordinary speech?
A. No, sir; not to my knowledge.
Q. Do you deal in undershirts and drawers made of woven fabric?
A. No, sir.

Q. To what use are the articles represented by 1 and 2, 187 importers' exhibits, put?

A. They are worn for an article of clothing.
Q. Exclusively?
A. Yes, sir.
Q. Not used for any other purpose?
A. They are manufactured and sold for that purpose.
Q. Adapted for that purpose?
A. Adapted for that purpose. *A.* Yes, sir.

Cross-examination waived.

WILLIAM B. BRADBURY sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?
A. I am a salesman of hosiery and underwear.
Q. What house?
A. Joy, Langdon & Co.
Q. Located where?
A. 108 Worth street.
Q. How long have you been engaged in that business?
A. I have been in that business near nine years, and I have been in the hosiery business nineteen years.
Q. Where before?
A. In Boston.
Q. Will you look at Importers' Exhibits 1 and 2, blue shirts and drawers, and tell us whether in the course of your business you have become familiar with articles of that nature?
A. Yes, sir.

Q. By what name in the trade and commerce of this country prior to October 1, 1890, were articles represented by those samples bought and sold?

A. Shirts and drawers—underwear.

Q. Will you look at the other samples—socks and stockings and union garments, and whatever there is there representing the
188 importers' importations—and state whether you are familiar with articles of that class in your trade?

A. I am.

Q. By what name in the trade and commerce of this country prior to October 1, 1890, were such articles as those bought and sold?

A. Socks, stockings, hosiery.

Q. In the course of your experience have you ever known articles represented by those samples or any of them to have been bought and sold or billed or invoiced as "knit fabrics"?

A. No, sir.

Q. Does your house deal in any knit cloths that are bought and sold by the yard?

A. No, sir.

Q. No piece goods?

A. Woven piece goods; not knit piece goods.

Q. Of what nature?

A. Cotton cloths, such as dress goods or sheetings, shirtings, and such things, and also in cassimeres for men's wear.

Cross-examination waived.

WILLIAM H. THORNE sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?

A. Hosiery, gloves, and underwear.

Q. What is the style of your firm?

A. Individually, William H. Thorne.

Q. Where is your place of business?

A. 404 Broadway.

Q. For how many years have you been so engaged?

A. Since 1854.

Q. What class of goods have you dealt in during that time?

A. The same class that I am now in—hosiery, gloves, underwear, undershirts and drawers, gent's furnishing goods.

189 Q. Are you familiar and have you been with such articles as are represented by the Importers' Exhibits 1 and 2, blue undershirt and drawers, that you see before you there?

A. Yes, sir.

Q. And also with the other articles that are before you representing the importers' goods—socks, stockings, union suit, etc.?

A. Yes, sir; somewhat.

Q. By what name or names in the trade and commerce of this country prior to October 1, 1890, were such goods bought and sold?

A. Each article?

Q. Yes.

A. No. 10, hose; No. 8, men's half hose; No. 1, man's shirt; No. 2, man's drawers.

Q. Do you deal in those union suits?

A. No, sir; not much; not generally.

Q. Do you deal in the flannel suits?

A. Yes; the shirts; also in the drawers in two makes, canton flannel and wool flannel and jeans. Those we have in the other goods.

Q. Within your experience were the articles represented there by the importers' samples ever bought and sold in the trade and commerce of this country prior to October 1, 1890, as "knit fabrics"?

A. Not to my knowledge.

Q. Did you ever see them billed or invoiced under that name during your experience?

A. No, sir.

Q. To what use are such articles put exclusively?

A. For men's wear and women's wear, these that are exhibited here.

Q. Those articles are all ready made as they appear there, are they or are they not?

A. Yes, sir; as far as I have observed.

Q. And form a part of the clothing of a person?

A. Yes, sir.

190 Cross-examination by Mr. KETCHUM:

Q. Are you a retailer or wholesaler?

A. Wholesaler.

Q. Do you deal in a general line of goods?

A. Yes, sir.

Q. Linen as well as woolen?

A. No linen goods. The nearest we come to that is a gentleman's dress shirt.

Q. Do you deal in cotton goods?

A. Yes, sir.

Q. What kind of cotton goods?

A. Cotton hosiery and half hose.

Q. And drawers and shirts?

A. Yes, sir.

Q. Suppose you were away from your store and should meet a friend of yours in the street and should say, "I have got some shirts and drawers that I would like to sell you," would he understand what you meant?

A. Oh, yes.

Q. What would he suppose you meant, just that phrase and nothing more, "I have got some shirts and drawers to sell you"?

A. He would want then to know what kind, whether they were for winter or for summer and whether they were full fashioned or cut. He would ask me those questions to describe the article that I wanted to show him.

Q. Would that be sufficient?

A. Yes, sir.

Q. Don't you think you would need to name the material?

A. Yes; whether it is all wool or merino or cotton.

Q. In short, he would not understand you at all if you were simply to say that you had shirts and drawers to sell him; he would want to know "what do you mean, wool or cotton"?

A. Then he would ask me what kind of shirts and drawers.

Q. He would want the particulars?

A. Yes, sir.

Q. Suppose a man should go to that sample No. 1 which
191 you have seen and say, "What sort of a fabric is this?" What would you answer him?

A. Of what fabric it is?

Q. "What sort of a fabric is this?" Suppose he should ask you that question?

A. I should say it was a mixture of cotton and wool or all wool or all cotton, as the case may be.

Q. That would be your answer, would it?

A. Yes.

Q. Would that be all your answer?

A. We deal in so few and men in the trade know whether it is a knit or a woven fabric, and I don't know that I ever had the question asked me. People in business that we come in contact with know what the goods are or are supposed to know, so that we do not have to go into details. They generally understand their business quite as well as we.

Q. Suppose a person not an expert should ask you that question, what would be your ordinary answer to such a question?

A. What question?

Q. "What sort of a fabric is this?" I come to you, for example, and take hold of that piece and say, "Mr. Thorne, what sort of a fabric is this?" What would your answer be? I am not an expert.

A. A knit fabric composed of wool or merino or cotton.

Q. You have these goods or such as these on hand ready-made, have you not?

A. Yes, sir.

Q. That is the way they are generally sold, is it not?

A. Yes, sir.

Q. Did a man ever come in to you and ask you to make an article of that kind to order?

A. No, sir; except certain extra sizes.

Q. They have asked you to supply them with certain sizes
192 which you did not happen to have on hand?

A. Yes; that are not usually made.

Q. But did a man ever get measured by you for a shirt or a drawer of that kind?

A. No, sir.

Q. You never heard of such a thing in your business, did you?

A. Oh, yes.

Q. Have you heard of it?

A. Oh, yes.

Q. But you never experienced it?

A. No, sir.

Q. Where did it happen when you heard of it—at least where did you hear of it happening—of a man coming in to be measured for shirts and drawers to be made to order; not for an assortment, but to be made to order?

A. The only case that has come to my knowledge would be for extra large or extra small sizes. Where a man would be particular to have the garment to fit him, then the customer would ask us to have it made up for him.

Q. That is very exceptional, is it not?

A. Yes, sir.

Redirect examination by Mr. PLATT:

Q. What sort of a fabric is your coat that you have got on?

A. A woven-wool fabric.

Q. By that you mean it is a garment made out of a woven-wool fabric, don't you?

A. Yes, sir.

Q. Did you use the term "knit fabric" in regard to that completed drawer in the same sense?

A. Yes, sir.

Q. You refer to the fabric out of which the garment is made?

A. Most assuredly.

Q. The counsel asked you what kind of a fabric that was; he did not ask you what kind of a fabric it was made out of.

A. I understood him to ask me the fabric these goods are made from.

193 Q. He did not ask you that question and he did not intend to, and I wanted to call your attention to it and see what your answer meant. He asked you what that fabric was.

A. I did not so understand it.

Mr. KETCHUM: I did not ask any such question. My question was quite different.

The WITNESS: I am sorry I did not understand you.

Mr. KETCHUM: I think you understood me fully. I give you credit for that, certainly.

The WITNESS: I thought you asked what these goods are made of.

Mr. KETCHUM: "What sort of fabric is this?"

JAMES H. STORY sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?

A. Inspector of customs and chief of surveyor's staff.

Q. How long have you been inspector?

A. Since the 14th of February, 1870.

Q. You have had an experience thereabouts 20 years?

A. 21 years.

Q. Has it been and is it a part of your duties to examine the per-

sonal clothing, wearing apparel, of people arriving in the United States?

A. I have a general supervision of it.

Q. Will you look at the importers' exhibits before you there—shirts and drawers, socks, stockings, etc.—and will you state whether or not during your experience as an inspector such articles as those have been exempted from duty when brought into port by persons arriving in the United States as a part of their personal cloth-
194 ing or wearing apparel?

Objected to on the ground that the witness is not a proper expert to testify on the subject.

A. They are exempt from duty if they are in actual use—wearing apparel in actual use.

Q. I mean in actual use goods of that character?

A. Yes, sir.

Q. That has been the custom for the past 20 years, as long as you have been in the service?

A. Yes, sir.

Cross-examination by Mr. KETCHUM:

Q. Have you got a copy of the oath which is taken by the incoming passengers in connection with the declaration?

A. I don't think I have here.

Q. Can you remember the phrasing of it?

A. Yes, sir. I can give you the general tenor, I think.

Q. Are the words "wearing apparel" used?

A. "Wearing apparel for myself or intended for my personal comfort and convenience, not imported for any other person or persons or intended for sale."

Q. Are the words "personal effects" used?

A. I think so. "Wearing apparel in actual use; personal effects not merchandise," I think is the term.

Q. You are sure that the phrase "wearing apparel" comes in, are you?

A. Yes, sir.

Q. "Personal effects" also comes in?

A. Yes, sir.

Counsel for the collector reads in evidence from S. S. 10389, G. A. 80, dated October 29, 1890, being a decision of the board of general appraisers, as follows:

"The merchandise under consideration consists of completed
195 garments manufactured from wool and rubber-mixed fabrics; which fabrics, had they been imported in the piece and not made into garments, would in our opinion have been covered by paragraph 453, as heretofore ruled by us, under date of September 9, 1890, G. A. 19. The word "fabric" in its broader sense would include manufactured articles of almost every description, but a narrower interpretation must be placed upon the word conformable with the intent of Congress and commercial usage. This would limit the term to a class of textile fabrics or piece goods."

Mr. PLATT: I produce here two exhibits in this case of Arnold, Constable & Co., which come from the board of appraisers stamped, brought here by Mr. Elmes, being the two papers put in evidence upon which I suppose they based their finding that advertisements had been produced before them, for the purpose of showing this fact. The first is the Dry Goods Economist, dated December 13, 1890, two months after the passage of this act. The other is the Evening News, of Hoboken, New Jersey, dated December 6, 1890; not only after the passage of the act, but after the protest in this case. In this exhibit, the Dry Goods Economist, dated December 13, 1890, that was before the board of appraisers, one of the advertisements was marked by the board as illustrating the advertisement of these goods, being the advertisement of Fred. Vietor & Achelis, importing and commission merchants, foreign and domestic woolens, knit fabrics; and in connection with that I desire to offer in evidence a copy of the same publication, the Dry Goods Economist, of September 6, 1890, before the passage of this act, of Fred. Vietor & Achelis, importing commission merchants, 66 to 76 Leonard street, in foreign and domestic woolens, cloakings, underwear, hosiery, jerseys, gloves, silks, dress goods, velvets, cotton
196 goods, silk and seal plushes, plain and mixed coatings, being substantially the same advertisement. To show that the words "knit fabrics" were not in the advertisement before the act, but were inserted in the advertisement after the passage of this act, I call the attention of the appraiser to that particular point, but I offer the whole book and all the advertisements in it on the same general subject.

Marked Exhibit U.

Counsel for collector offers in evidence from the Textile Manufacturers' Directory of the United States and Canada, published by H. H. Haddock, general manager and treasurer, No. 320 and 322 Broadway, New York, directory established 1870, this being the 17th edition of 1887, containing an account of the various woolen manufacturers throughout the United States, with their plant, machinery, etc.

On page 23, under "Connecticut:"

"N. S. Birge & Son, Bristol—merino and camel's-hair knit underwear; 16 knitting machines, 30 sewing machines."

On the same page: The Bristol Manufacturing Company—knit underwear; 30 knitting machines, 31 sewing machines.

Page 24: Glastonbury knitting mills—knit shirts and drawers; 26 knitting machines and 75 sewing machines.

Page 25: Star knitting mills, Hartford—11 knitting machines, 26 sewing machines.

Page 25: Manchester knitting mills—knit shirts and drawers; 8 knitting machines, 20 sewing machines.

Page 26: Dunham Hosiery Company, Naugatuck—knit shirts and drawers; 20 knitting machines, 50 sewing machines.

Page 31: Welsh hosiery mills, Waterville—hosiery; 28 knitting machines, 40 sewing machines.

197 Page 35: Henry W. Price—gloves and mittens; 30 knitting machines, 75 sewing machines.

Kingston Knitting Company and Niantic Hosiery Company, Boston—hosiery, cardigan jackets, etc.; 20 looms, 24 knitting machines, 20 sewing machines.

Page 55: Everett knitting mills—cardigans and leggings; 11 knitting machines, 10 sewing machines.

Page 55: Franklin knitting mills—plush and Jersey flannel, knit and blush goods, eider-down; 24 knitting machines.

Page 68: Agawam mills, Springfield, Mass.—full-fashioned underwear, hosiery, leggings; six sets of cards, 1,440 spindles, 120 knitting machines, 35 sewing machines.

Page 68: Medlicott Company—underwear; 12 knitting machines, 25 sewing machines.

Adjourned to Wednesday, April 1, 1891, at 11 a. m.

198 *In Re* ARNOLD, CONSTABLE & CO.

Hearing resumed April 1, 1891.

FRANCIS C. BREWSTER sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?

A. My business is agent for different manufacturers; principally knit goods.

Q. Where is your place of business?

A. 56 Worth street.

Q. How long have you been engaged in that business?

A. Five or six years; I don't know exactly which.

Q. What is the style of your firm?

A. The Claremont Knitting Company, Limited, of Philadelphia, is one of them.

Q. What class of goods do you deal in and have you dealt in?

A. We make what they call Jersey cloth of almost every description; fancy knitted fabrics, also garments, I may say. We cut it up into garments.

Q. I show you Exhibits L and Q. Are you familiar with goods of that character?

A. Yes, sir.

Q. What are they?

A. That is what we call Jersey cloth (referring to Exhibit Q).

Q. How about the other sample?

A. We do not go into the manufacture of that exact weave. We make the same class of material, only different coloring. This is what they call a stockinet cloth. We have the machines for this, but we do not manufacture it as much as we do the other class of goods—fancy fabrics.

Q. Are the goods represented by those samples bought and sold by the yard and in the piece in the markets of this country?

A. Yes, sir.

Q. And were prior to October 1, 1890?

A. Yes, sir.

199 Q. I show you Exhibit K; five samples in an envelope. Are you and were you familiar with goods of that character and description?

A. Yes, sir.

Q. What are they?

A. I should call three of the samples here Jersey cloth; in fact, they are all Jersey cloth, but there are two fancy weaves here. This is what they call a plain Jersey cloth.

Q. Are those made on a knitting machine?

A. Yes, sir.

Q. Or frame?

A. Knitting frame, we call it.

Q. How were these goods bought and sold in the trade and commerce of this country prior to October 1, 1890?

A. By the piece.

Q. Was there prior to October 1, 1890, any class name that would cover goods like those that have been shown you, Exhibit- L and Q and K—any general descriptive term that would cover such goods as those?

A. I should call it a Jersey cloth or knitted fabric, or something of that sort. It is known as piece goods, really.

Q. None of which are in the shape of completed garments?

A. No, sir.

Q. To what uses are such goods, represented by the samples before you, L, Q, and K, put?

A. They are made to use as a material to make up garments with.

Q. I show you the Importers' Exhibits 1 and 2. Are you or have you been familiar in your trade with articles of that description?

A. Yes, sir.

Q. By what name in the trade and commerce of this country prior to October 1, 1890, were those bought and sold?

A. Underwear.

200 Q. Are they in the shape and form of completed garments?

A. Yes, sir.

Q. And to what uses were they and are they applied?

A. For wearing apparel, I should say.

Q. Can you tell us to what class of goods the term "knitted fabric," if any, applied in the trade and commerce of this country prior to October 1, 1890?

A. I should say it was piece goods; by the yard.

Q. That were made on knitting frames or knitting machines?

A. Yes, sir.

Q. Was there prior to October 1, 1890, a large variety of that class of goods known in the trade and commerce of this country?

A. Piece goods—knitted goods?

Q. Yes.

A. Yes, sir.

Q. Were they the goods represented by the importers' samples there—the made-up article?

A. That was originally a piece of goods until it was manufactured into a garment; it had to be manufactured into a garment.

Q. I mean in that shape. When you speak of the term "knit fabric" in trade and commerce do you refer to such a made-up article?

A. No, sir; it is made of a knitted fabric, and it is a garment, I should say.

A. A completed garment?

A. Yes, sir; it has changed its name altogether.

Q. And it becomes a different article in the trade and commerce of the country?

A. Yes, sir.

Cross-examination by Mr. KETCHUM:

Q. You said that that shirt looked as if it was for wearing apparel. I suppose you meant by that that it looked as if it
201 was intended to be worn, didn't you?

A. Yes, sir.

Q. It is underwear, is it not?

A. Yes, sir.

Q. So generally known in the trade?

A. Yes, sir.

Q. How long have you been in this line of business?

A. Five or six years; I don't know which.

Q. Before that what did you do?

A. I have always been in this business.

Q. Then you began business about five years ago?

A. Yes, sir.

Q. Have you bought and sold such goods as these—either cloths or garments?

A. Yes; I have sold them; sold a great many of them.

Q. From your store?

A. Yes, sir; from our mill; we manufacture the goods.

Q. Have you sold the piece goods as well as the garments?

A. Yes, sir.

Q. You manufacture both, do you not?

A. Yes, sir.

Q. What proportion relatively; an equal quantity of each?

A. That depends a great deal upon how the orders are placed.

Q. Now, these piece goods to which you have referred are known as cloth or cloths, are they not?

A. They are known as cloths—piece goods.

Q. Did you ever know any cloths that did not come in the form of piece goods?

A. No; I cannot say that I did.

Q. Have you ever had anything to do with imported cloths of that character?

A. Yes, sir; I have.

Q. Have you any idea what quantity of imported cloths of that character comes in the United States?

A. To-day?

Q. Yes.

A. I don't think a very large proportion.

202 Q. What proportion of that which is knit—garments that are knit and cloth that is knit—what proportion does the amount of cloth imported bear to the total amount of both?

A. I could not answer that question.

JOHN C. LORING sworn and examined as a witness for the collector:

By Mr. PLATT:

Q. What is your business?

A. Agent for selling stockinet, kitted fabrics.

Q. How long have you been engaged in that business?

A. Seven years.

Q. What is the style of your house?

A. Obelmann, Dommrick & Co.; that is the house we sell the goods through.

Q. Where located?

A. 57 Greene street.

Q. In the course of your business have you become familiar with the trade and business terms used in that line of business?

A. Yes, sir.

Q. Will you look at the samples before you and state what goods there represented, if any, are the knit fabrics that you refer to as known in the trade and commerce of this country prior to October 1, 1890?

A. These samples that I see here are all knitted fabrics.

Q. Exhibits Q, L, and the five samples K?

A. Yes, sir.

Q. I show you some other samples. Will you please examine those and state what they are and what they were known as prior to October 1, 1890?

A. All this class of goods I sold prior to that.

Q. As knit fabrics?

A. As knit fabrics.

Counsel for collector offers in evidence the samples last shown the witness, marked Exhibit V.

203 Q. Prior to October 1, 1890, and also at the present time, how were knit fabrics bought and sold in the trade and commerce of this country?

A. By the yard and piece.

Q. Will you look at the samples, Importers' Exhibits 1 and 2, and state whether you are familiar with that class of articles and were prior to October 1, 1890?

A. Yes, sir.

Q. Do you know by what name in the trade and commerce of this country they were bought and sold prior to that time?

A. Underwear.

Q. What was the distinction, if any, in the trade and commerce of this country prior to October 1, 1890, between knit fabrics and underwear?

A. One was sold by the yard and piece and the other was sold as made-up apparel.

Q. Then, as I understand you, the word "fabric" differentiated the goods in the piece from the made-up article in the trade and commerce prior to October 1, 1890?

A. Yes, sir.

Q. Was there a larger variety of those piece goods prior to October 1, 1890, in the trade and commerce of this country known as knit cloth or knit fabric?

A. Yes, sir.

Q. Known to the trade?

A. Yes, sir.

Q. Imported as well as domestic?

A. Yes, sir.

Q. Can you tell us by what particular and specific names the different kinds of knit fabrics were known in the trade and commerce of this country prior to October 1, 1890?

A. Yes, sir; we have what we call a stockinet fabric; we have what is called a Jersey-cloth fabric; we have what we call a Melton; we have what we call a Cheviot; we have what we call an Astrakhan, and we have what is called a Boucle cloth.

204 Q. All knitted fabrics?

A. Yes, sir.

Q. Sold by the piece and yard?

A. Sold by the yard and piece.

Q. None of which were made-up goods?

A. No, sir.

Q. Do you deal in hose?

A. No, sir; I do not.

Cross-examination by Mr. KETCHUM:

Q. You are engaged exclusively in connection with articles of domestic manufacture, are you not?

A. Yes, sir.

Q. Have you ever imported any goods similar to the samples which have been shown you here?

A. I have not imported them; the house that I was with imported them.

Q. What house?

A. Mitchell, Morrison & Co.

Q. How long were you with them?

A. I was with them three years.

Q. Did they import cloths?

A. They imported cloths in the gray and had them dyed here.

Q. Did they import garments?

A. No, sir.
Q. Only cloths?
A. Only cloths.
Q. Did they import a large quantity or a small quantity?
A. A small quantity.
Q. Were you ever informed as to the relative quantity of knit cloth that was imported into this country during any year of your business life?
A. No, sir.
Q. If some one should come into your place—is it a store or a mill?
A. A regular commission house—a store.
Q. If some one should come into your place and tell you he wanted some knit fabrics, which of these samples marked V would you show to him?
A. In fact, I should show him all if he did not know what to get, because they are all knit fabrics, but they come under a dif-
205 ferent name. If he should come in and say he wanted a cheviot I should show him a cheviot.
Q. That is not my question. Suppose he should come in and tell you he wanted some knit fabric, what would be your next remark to him?
A. I should tell him that I had the goods and show them to him.
Q. You would show him all your stock, would you, of knit fabrics?
A. Yes, sir.
Q. Don't you think you would ask what particular denomination he wanted?
A. I might ask him what price he wanted to look at.
Q. Wouldn't you ask him whether he wanted an Astrak-an cloth or a pile fabric or a cheviot or something else?
A. Yes.
Q. Would not that be the most natural question in the world?
A. Yes, sir; they come in generally and want to look my stock over.
Q. How is this Astrak-an cloth made?
A. It is made on a knitting machine or frame.
Q. Is it all made on a knitting frame?
A. Yes, sir.
Q. Is it made by one process?
A. Yes; all except the gigging-up part of it; that is done on a gigging machine.
Q. That is a very important part of it; it makes the astrak-an. Without that there is no astrak-an?
A. Yes.
Q. Either real or imitation?
A. Yes.
Q. That is a separate process entirely, is it not?
A. Yes.
Q. Do you call that a knit fabric?
A. Yes, sir.
Q. What is the name of that other machine that is used?

A. A gigging machine—what we gig up the back of our
206 stockinet with; we use it in gigging that up.

Q. Those are a sort of loop, are they not, that make the Astrak-an cloth?

A. Yes, sir.

Q. And by this machine they are hitched onto the first piece?

A. They are knitted right in with the cloth at the same time the back is made.

Q. At the same time?

A. Yes, sir.

Q. By a separate machine?

A. No; one machine.

Q. The same machine?

A. The same machine.

Q. What is this gigging machine?

A. If you have a piece of jersey or stockinet, when it is knitted perfectly plain, as the gigging machine goes over them it gigs it up.

Q. After it is knit?

A. After it is knit.

Q. Does it draw out a portion of it?

A. Yes, sir.

Q. So that there is no separate attachment of the upper surface with the lower?

A. No.

Q. Did you ever hear these called pile fabrics?

A. No.

Q. Never in your life?

A. Never in my life.

Q. Now, here is a woolly piece of stuff among these samples V?

A. That is what we term stockinet.

Q. The distinguishing feature of that is that it has a rough surface, raised?

A. Yes; that is what we do by the gigging machine.

Q. That the gigging machine does also?

A. Yes, sir.

Q. A different kind of a gigging machine, I suppose, from the other?

A. Yes, sir.

Q. How about this red sample; is that done by a gigging machine?

A. Yes, sir.

Q. The other three pieces are plain?

A. That is what we call Melton cloth, except that (indicat-
207 ing); that is a cheviot. These we call meltons; that is the head under which we sell them.

Q. These are cloths, are they not, all of them?

A. No; we don't term them as such.

Q. Would you call those three samples cloth, those smooth ones?

A. No, sir.

Q. Don't you?

A. No.

Q. What do you call them?

A. We call them knitted melton or a stockinet cheviot, the same as that one piece there: we call that stockinet, heavy; this is light weight; we sell them under that name and bill them as such, "stockinet cheviots."

Q. Now, is not that a more precise name for an article which is generally called a knit cloth?

A. No; I never yet sold them as such, as a knit cloth, nor called them such and I never heard them called such.

Q. Never knew them as cloths?

A. No, sir.

Q. And you say the same with regard to the other samples, do you?

A. Yes, sir.

Q. Did you ever hear anybody in all the years of your experience come into your place and ask you for a knit fabric, using the phrase "knit fabric"?

A. Yes, sir; every week.

Q. Every week?

A. Yes, sir; I guess sometimes two and three times a day, referring to goods of that character.

Q. But using that phrase; I do not mean to ask for an article which is in fact a knit fabric, but do they come in to you and say, "I want some knit fabric"?

A. Yes, sir.

Q. You have had such an experience?

A. Yes, sir.

208 Redirect examination by Mr. PLATT:

Q. You say you call the astrak-an a fabric in that shape because it is not made up, don't you?

A. Yes.

Q. If that was made up into a completed article you would not call it a fabric after it was so made up?

A. No, sir; we should call it an astrak-an garment.

Q. But in that shape, sold by the piece and the yard, it is known as a fabric?

A. Yes, sir.

Q. A knit fabric?

A. Yes, sir.

Recross-examination by Mr. KETCHUM:

Q. The only distinction that you would make is that this then becomes a garment?

A. After it is made up.

Q. That is the only distinction?

A. An astrak-an garment. We would not call it a knitted garment; we would call it a knitted astrak-an garment.

Q. Before, according to your theory, it was a knit fabric?

A. Yes, sir.

Q. And afterwards——

A. Afterwards it becomes an astrak-an garment, after it is made up.
Q. That is the only distinction you make?
A. Yes, sir.

By Mr. PLATT:

Q. The same as a piece of cloth becomes a coat when it is made up into a coat?
A. Precisely.

LEWIS C. WANAMAKER sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?
A. Commission, dry goods, and hosiery; knit goods.
Q. How long have you been in that business?
A. I have been in the dry-goods business about 25 years.
Q. Where is your place of business at present?
A. 216 Church street.
209 Q. In the city of New York?
A. Yes, sir.
Q. What class of goods have you dealt in?
A. We have dealt in knit fabrics, hosiery, underwear, knit shawls, blankets, piece woolens, jerseys.
Q. I show you Exhibits Q, L, K, and V, and ask you by what name or names in the trade and commerce of this country such goods as those were bought and sold prior to October 1, 1890.
A. These are different fabrics (examining Exhibit V). I have here meltons.
Q. Two of them are meltons?
A. Yes, sir. That is a species of astrak-an, imitation of an astrak-an. That is a fabric that has only been made recently; I hardly know what classification to put on that. That is a species of stockinet cloth. That is a stockinet cloth.
Q. As to the red one?
A. That comes under the same head, but a different class of the same fabric.
Q. All those were and are bought and sold by the yard or piece in trade and commerce?
A. Yes, sir.
Q. And are all those fabrics woven or knitted?
A. Some are woven and some are knitted.
Q. Which are woven?
A. The stockinet cloths are knitted and the meltons are woven.
Q. Are you a manufacturer?
A. No, sir; manufacturer's agent.
Q. Are you certain about the Melton cloth that you have there being woven or knit? Examine it and see if you are able to tell.
A. That is woven.
Q. Do you find any warp or woof there?
A. (After examining the sample:) My judgment is the same that

that is woven. It certainly is not knit unless I have been in
210 the dark for 25 years. This is knit.

Q. We thought they were all knit. We will leave those now. Now look at the five samples marked Exhibit K and state what they are.

A. I should call four of those stockinet cloths, and I should think that was, although my judgment is not clear in regard to this piece.

Q. How are those samples marked Exhibit K and the samples marked Exhibit V bought and sold or were they bought and sold prior to October 1, 1890, in the trade and commerce of this country?

A. By the yard.

Q. There are two other samples there—Q and L?

A. These are stockinet cloths.

Q. Made on a knitting frame or knitting machine?

A. Yes, sir.

Q. Bought and sold in the trade and commerce of this country prior to October 1, 1890?

A. By the yard.

Q. Now I show you importers' samples 1 and 2 and ask you under what names were articles represented by those samples bought and sold in the trade and commerce of this country prior to October 1, 1890.

A. I should call this knit underwear, wearing apparel.

Q. I show you the balance of importers' samples in this case, consisting of socks, stockings, drawers, union suit, and so on. Under what name in the trade and commerce of this country were such articles as that bought and sold prior to October 1, 1890?

A. Bought and sold as hosiery. The specific term for those is half hose. It all comes under the same classification. These are bought and sold as underwear and wearing apparel; as shirts and drawers sometimes. Either of the terms is proper.

211 Q. Prior to October 1, 1890, in the trade and commerce of this country, did you ever know or hear of articles being bought and sold as "knit fabrics"?

A. It is a term that is sometimes used; it is not generally known in the trade, however.

Q. Not a trade term?

A. No, sir.

Q. Had it any other or different meaning in the trade and commerce of this country prior to October 1, 1890, than its ordinary meaning in ordinary speech?

A. I don't know as I understand exactly.

Q. Had the term "knit fabrics," in the trade and commerce in this country, any peculiar meaning other than its ordinary meaning?

A. A fabric I should understand as goods sold by the yard. I have always so understood it.

Q. And as distinguished from made-up articles?

A. Yes, sir.

Q. Had the term "wearing apparel," in the trade and commerce

of this country prior to October 1, 1890, any other or different meaning than its ordinary meaning?

A. They have always been known during my experience under the terms that I have named.

Q. The particular terms that you have named?

A. Yes, sir.

Q. You refer now to the samples before you?

A. Yes, sir.

Q. What do you understand, in the trade and commerce of this country prior to October 1, 1890, was the meaning of the term "wearing apparel"?

A. It is something that has been made into a garment from a fabric or cloth. Of course there is fabric in every article of wearing apparel, but fabric, as I understand it and have always understood it, applies to goods by the yard. When it was made into a garment we styled it under a division of wearing apparel known as shirts and drawers, hosiery, jerseys, or whatever garment it should be made into.

212

Q. There were in the trade prior to October 1, 1890, different divisions of wearing apparel?

A. Yes, sir.

Q. Some for men, some for women, and some for children?

A. Yes, sir.

Q. And outside wear and inside wear?

A. Yes, sir.

Q. All included within the term "wearing apparel"?

A. Yes, sir.

Q. It was a general term?

A. Yes, sir. Underwear is very frequently given as the term for shirt and drawers.

Q. For that kind of wearing apparel?

A. Yes, sir.

Cross-examination by Mr. KETCHUM:

Q. Do you import any of the goods like the samples that have been shown to you?

A. Which sample do you refer to?

Q. I mean all of them; the piece goods and the garments.

A. A number of those are domestic goods, if you will tell me which one.

Q. No; I ask you the same question. I ask you whether you import.

A. We do not import any goods at all.

Q. No goods at all?

A. No, sir; not at present.

Q. You are an agent, I understand. Are you agent for any importing house?

A. No, sir.

Q. Only for domestic manufacturers?

A. Yes, sir. I have handled or imported goods, however, for twenty years.

Q. How long ago?

A. Until within the last three or four or five years.

Q. Did you handle piece goods such as you have seen
213 samples of here?

A. I have seen but very few imported goods; most all I have seen are domestic goods.

Q. That is not the question. I will put it in another way. Were you concerned in any respect in the importation of knit articles coming in the piece?

A. I have not handled any of that class of goods; no, sir.

Q. When you looked at sample No. 1 of the importers and were asked what it was called in trade and commerce I think you used this phrase, "knit underwear, wearing apparel." Now, having said "knit underwear," why did you add "wearing apparel"?

A. It is sometimes styled one thing and sometimes another. I gave all the terms by which I knew it.

Q. In transactions between yourself and your customers is the phrase "wearing apparel" ever used when inquiry is made for such articles?

A. It may be, sometimes.

Q. It would be very unusual, would it not?

A. A customer usually asks to see shirts and drawers or underwear.

Q. Knit underwear?

A. Knit underwear.

Q. Knit underwear is really the most specific?

A. Sometimes called hosiery, but I think that is a vague term. I don't think hosiery strictly applies to shirts and drawers.

Q. Now, as to these articles in the piece of which you have spoken, represented by the samples shown you, I notice you used the word "cloth" and the word "cloths" quite frequently; indeed, I suppose those articles are known as cloths, are they not?

A. Not by that simple term—not that term by itself; stockinet cloths would be a proper term for them.

Q. That would be descriptive of the particular texture of the article?

A. Yes, sir.

214 Q. The same as astrak-an?

A. Astrak-an cloth.

Q. But they are cloths, nevertheless?

A. That term could be applied generally to everything by the yard.

Q. Now, that is very important. I was going to ask you that question next.

A. You could say a print was a cloth.

Q. It can be truly so applied in trade and commerce, can it not?

A. But we could not define or classify our goods by such a term.

Q. You would want to use the word "woolen" or the word "cotton," or some other such description, or stockinet if it is knit stockinet, indicating a particular form of the woolen article?

A. Yes, sir.

Q. But after all goods that come in the piece of any width—I do not refer to ribbons, which are generally quite narrow and belong to a different category of things, but goods which come by the piece and of considerable width—which may be cut into various shapes, and which are known as textile fabrics, are generally called cloths, are they not?

A. Well, I think not in that term—not as you put it.

Q. How would you put it?

A. I should specify whatever I was handling, so that if I were writing to you you would know what I meant if you were in the trade.

Q. These garments that you have looked at here you would not d-ominate cloths, would you? You would not take up sample No. 1 and call it a cloth, would you?

A. It is a species of cloth.

Q. But you would not take it up and call it a cloth; you would call it a shirt, wouldn't you, or an undergarment?

A. I don't know to which you refer.

Q. The shirt.

A. I should call that a shirt.

215 Q. But you would not call it a cloth, would you?

A. No, sir; it is made of cloth.

Q. You would not call it a cloth; you wonld call it a shirt or undergarment.

A. I would call that a knit shirt or gentleman's underwear.

Q. Now, take one of those larger pieces; take Q; you would call that cloth, wouldn't you?

A. I termed that in my direct examination stockinet cloth.

Q. So it is cloth?

A. It is a species of cloth.

Q. It is cloth of a species known as stockinet cloth?

A. Yes, sir.

Q. What is it used for?

A. They make gentlemen's office coats of it. I believe sometimes suits are made of it.

Q. If you saw a coat made of it you would call the garment a coat, wouldn't you?

A. I should call that a coat; yes, sir.

Q. This sample L you would call cloth, would you not?

A. I should call that stockinet cloth.

Q. The same thing?

A. Yes, sir; a little different species.

By Mr. PLATT:

Q. You say you would not call Exhibit 1, the shirt there, a cloth?

A. No, sir.

Q. Would you call it a fabric?

A. No, sir.

By Mr. KETCHUM:

Q. Suppose some one should come into your store and take up

that shirt and say, "Mr. Wanamaker, what kind of a fabric is that?" What would you answer?

A. If they should ask what that garment was——

Q. No, no; my question, not your question. "What kind of a fabric is that, Mr. Wanamaker?"

216 Mr. PLATT: It is not any kind of a fabric?

A. It is not a fabric.

Mr. KETCHUM: That suggestion of counsel is improper. I have nothing more to ask.

F. A. CRANDALL sworn and examined as a witness for the collector.

By Mr. PLATT:

Q. What is your business?

A. I sell the product of the Knitted Fabric Company?

Q. Where are they located?

A. Methuen, Massachusetts.

Q. How long have you been in that business?

A. Ever since they started; I think in 1883.

Q. What class of goods do you deal in and have you dealt in?

A. Nothing but knitted fabrics.

Q. What do those comprise?

A. Those comprise jerseys, stockinets, astrak-ans, kerseys, beavers.

Q. How were those goods bought and sold in the trade and commerce of this country prior to October 1, 1890?

A. Sold by the piece.

Q. Any of them made-up goods?

A. No, sir.

Q. I show you a copy of the Dry Goods Economist of April 12, 1890, page 32. Is that the advertisement of your concern?

A. Yes, sir; I wrote it.

Counsel for collector offers in evidence the advertisement referred —, marked Exhibit W.

Exhibit W. is as follows:

"Knitted Fabric Company. These popular stockinets, Jersey cloths, and knitted novelties will be included in our business from this date. A special line is now prepared for men's wear, and
217 the attention of the clothing trade is particularly invited. Mr. F. A. Crandall continues to be associated with this account."

Q. Will you look at Importers' Exhibits 1 and 2, shirts and drawers? Do you deal in these articles or articles similar to those?

A. No, sir.

Q. Do you deal in any made-up garments?

A. No, sir.

Q. You deal exclusively in goods sold by the yard and piece?

A. Yes, sir.

Q. Prior to October 1, 1890, in the trade and commerce of this

country was there any particular meaning to the term "knit fabrics;" and, if so, what was it?

A. I have always understood that knit fabrics meant piece goods.

Q. Did you ever in the course of your experience know or hear of any made-up articles being bought or sold under the name of "knit fabric" or "knit fabrics" prior to October 1, 1890?

A. Not under that name.

Cross-examination by Mr. KETCHUM:

Q. What did you say your business was?

A. I sell the product of the Knitted Fabric Company.

Q. That is a domestic institution?

A. A domestic institution.

Q. And you have not dealt at all in imported goods of that character?

A. No, sir.

Q. Will you please tell us what you understand by cloths?

A. Goods which are sold by the yard or the piece.

Q. Therefore these knitted fabrics to which you have referred, piece goods, are also cloths, are they not?

A. No, sir; I would not call them cloths; I should call them knitted fabrics.

218 Q. Why is it different in this case from what it would be in other cases? If cloth, according to your first definotion, was an article sold by the yard or piece, and these, as is admitted, are articles sold by the yard or piece, why are not these articles cloths?

A. I have always put in the category of cloths goods which are woven.

Q. Then you make a new distinction. Then an article to be a cloth must be woven?

A. I should say so.

Q. It is not a cloth if it is knit or knitted?

A. No, sir.

Q. Have you dealt largely in piece goods?

A. Yes, sir.

Q. What has been your experience?

A. What do you mean; in what way?

Q. Do you sell the goods of the concern you are connected with?

A. Yes, sir.

Q. How long have you been connected with them?

A. Since they started—seven years ago, I think it was.

Q. In that capacity?

A. Yes, sir; I have always had charge of it.

Q. Before that were you engaged in selling piece goods?

A. I was, sir.

Q. With whom?

A. A. T. Stewart & Co.

Q. How many years were you with A. T. Stewart & Co.?

A. I went with them in 1876, and I think I left them in 1881; then I went with Brown, Wood & Kingman.

Q. When you were connected with Brown, Wood & Kingman, what department did you have charge of?

A. I did not have charge of any department there. I used to sell the Gilbert flannels.

Q. And with A. T. Stewart how was it; did you have charge of a department?

219 A. Woolens. I had no charge. I was a boy then.

Q. You were in the woolen goods department?

A. Yes, sir; I was in the woolens.

Q. Did you sell woolen piece goods?

A. I sold woolen piece goods?

Q. Knitted piece goods?

A. No, sir.

Q. Only woven?

A. Only woven.

Q. When you were with Brown, Wood & Kingman did you have anything to do with selling knit goods in the piece?

A. No.

Q. So your first knowledge of knit goods in the piece came to be after you became connected with the present company?

A. No; hardly that. I think it was in 1883 or 1884 we started this mill. Brown, Wood & Kingman had the selling agency of it, and I was put in charge of it.

Q. Are you one of the proprietors of the mill?

A. No, sir.

Q. Are you the Mr. F. A. Crandall referred to in this advertisement?

A. Yes, sir.

Q. I understand you to have said that your company sells piece goods only?

A. That is all, sir.

Q. Therefore nothing but piece goods are embraced within the scope of this advertisement?

A. That is all.

Q. What do you mean by "knitted novelties" in this advertisement?

A. Well, I should call Boucle goods.

By the REFEREE:

Q. Looped?

A. Yes, sir; looped like one in Exhibit V.

By Mr. KETCHUM:

Q. I understood you to have said that in your opinion a knitted article in the piece is never known as a cloth; it must be woven to be a cloth?

A. That is what my impression is.

220 Q. What, then, is the meaning of the phrase in this advertisement, "Jersey cloths;" are they not knit goods?

A. Yes, sir.

Q. How do you reconcile that with your definition; it is irreconcilable, isn't it?

A. Well, that is about the way a party comes into the store. Sometimes they will ask for stockinet cloth, but we never call it stockinet cloth; it is simply a phrase in the trade.

Adjourned to Thursday, April 2, 1891, at 11 a. m.

221 *In Re* ARNOLD, CONSTABLE & Co.

Hearing resumed April 2, 1891.

Counsel for collector offers in evidence the report of the conference of local appraisers, dated October 21, 1890, page 12, as follows:

"After the most careful consideration and having consulted high and reliable authority we have arrived unanimously at the conclusion that the language of paragraph 396, which provides for clothing ready made and articles of wearing apparel, etc., must be held to include the knit articles of wearing apparel which are in a condition for use as clothing or apparel without further manufacture, including stockings, shirts, drawers, jerseys, and other similar articles," etc.

Counsel for importers objects to the introduction of the above document on the ground that the appraiser is an officer of first jurisdiction only and his decision is not final.

Counsel for collector offers in evidence from the Commercial Advertiser of May 15, 1890, the advertisement of Lord & Taylor in regard to the use in trade and in popular use of the word "fabric," containing the words "fast black and white dress fabric."

Marked Exhibit X.

Also from the Commercial Advertiser of May 16, 1890, advertisement of A. A. Vantine & Co.:

"5,000 yards Kanko cotton crepe in stripes and checks, 31 inches wide, for country and seaside wear.

"We have confidence in recommending this fabric."

Marked Exhibit Y.

222 Also from the Commercial Advertiser of May 21, 1890, advertisement of James McCreery & Co.:

"Bargains in dress goods. In order to give purchasers an early opportunity to take advantage of the summer reductions, we have assorted from the general stock of dress goods various lines of plain and fancy suitings and marked them at prices that make them decided bargains. Cheviots, challies, serges, mohairs, dress veilings, and other popular fabrics are included in these reduced lines."

Marked Exhibit Z.

Also from New York Daily Tribune of May 28, 1890, advertisement of James McCreery & Co.:

"Marked reductions in dress goods. Have just received a limited importation of white Bedford cord and silk crepon, the most popular fabrics for the summer season."

Marked Exhibit A A.

Also from New York Daily Commercial Bulletin of August 9, 1890, under the headings, "Dry-goods trade:"

"Ginghams and woven wash fabrics. There was a good, steady movement in dark dress ginghams and napped dress fabrics (imitation flannels) on account of former transactions, and agents continued to receive numerous re-orders from the West, Southwest, and South."

"Low-priced fabrics are relatively more active than other descriptions, but the best makes of fine fancy worsteds and cassimeres are meeting with a good deal of attention, and black and colored serges, also indogo-blue flannel suitings, are doing fairly well in some quarters."

Marked Exhibit B B.

Also from New York Daily Commercial Bulletin of August 21, 1890, under the — "Dry-goods trade:"

223 "Wholesale clothiers report an improved demand this season for Cheviot goods. This fabric has been comparatively neglected for the past year or two, as a result of a previous infliction of shoddy imitations that frightened off consumers and disgusted the trade."

Marked Exhibit C C.

Also from the New York Journal of Commerce of Sept. 11, 1890, under the heading "The dry-goods market":

"Printed and woven dress cottons.—Dark spring styles of ginghams, which are being shown because of special demand, are selling freely, and there is a steady business in dress plaids, flannelettes, and seersuckers. With jobbers business was good in this class of fabrics, both printed and woven.

"Woollen goods.—There was no change or feature of interest in regard to the demand for clothing woollens, the market having relapsed into between-seasons quiet, with very few buyers in the market, and these rather in quest of heavy than light-weight fabrics. In some instances there was a relatively fair request for spring styles, and new business in popular specialties and low-grade fabrics was restricted by the sold-up condition of many styles. Overcoatings were having more attention and cloakings were in demand. Satinets were moving out steadily on orders, but Kentucky jeans were quiet."

Marked Exhibit D D.

Also from Harper's Magazine of Sept., 1889, advertisement of James McCreery & Co.:

"Choice novelties is woollen dress goods for the fall are now
224 ready.

"In fancy woollen fabrics to be made up alone or in combination, plaid and -ombre effects, ranging from delicate, nearly invisible, blocks and checks to most brilliant Scoth-clan colorings, are to be the leading styles.

"James McCreery & Co., Broadway & 11th street, New York."

Marked Exhibit E E.

Also from Harper's Magazine of November, 1889, advertisement of James McCreery & Co.:

"To those in quest of materials for street, dinner, and reception gowns, we are in position this season to show a variety in silks and dress goods unparalleled for elegance of design and finish.

"Our assortments include plain and fancy fabrics of every quality and price that we can recommend as reliable."

"James McCreery & Co., Broadway & 11th St., New York."

Marked Exhibit F F.

Counsel for importers objects to the above advertisement on the ground that there is no testimony introduced to show that the page in question came from the issue of November, 1889.

JAMES D. ANDREWS sworn and examined as a witness for the collector:

By Mr. PLATT: I show you this page from Harper's Magazine (showing witness Exhibit F F).

A. I cut this from a copy of Harper's Monthly Magazine, the advertiser in with the regular magazine, for the month of November, 1889, last evening, to save the trouble of bringing the whole book here.

225 Q. I show you another (handing witness a paper).

A. This is a leaf from the advertiser of Harper's Magazine of the month of January, 1890. I cut it out last evening from the magazine itself.

Counsel for collector offers in evidence from the page of Harper's Magazine referred to advertisement of James McCreery & Co., Broadway and 11th street, New York, as follows:

"A black silk-warp henrietta cloth is the most serviceable and the most desirable black woollen fabric for ladies' wear."

Marked Exhibit G G.

Q. I show you another (handing witness a paper). Do you know where that came from?

A. I cut this from Harper's Magazine of January, 1889, last evening.

Counsel for collector offers in evidence from the page of Harper's Magazine referred to advertisement of James McCreery and Co., Broadway and 11th street, New York, as follows:

"Evening silks.—We offer for inspection this month an unusually rich assortment of silks for evening, ball, reception, and wedding gowns.

"All the delicate shades of this season are represented in the different weaves—surah, Peau de Soie, Armure, Royale, and Faille Française—either in plain fabrics or fancy goods, exquisitely brocaded or embroidered.

"Samples will be sent on application."

Marked Exhibit H H.

Counsel for importers makes a special objection to all ex-
226 hibits that have no appearance of connection with woollen goods.

Q. I show you another (handing witness a paper).

A. This is from Harper's Magazine for February, 1890. I cut it from the magazine last evening.

Counsel for collector offers in evidence from the page of Harper's Magazine referred to advertisement of the Norfolk & New Brunswick Hosiery Co. as follows:

"The Norfolk & New Brunswick Hosiery Co.'s full-fashioned underwear in all weights and grades. Full regular-made balbriggan, merino, and Australian lambs' wool underwear; pure natural wool undyed. The oldest and largest manufacturers in the U. S. of fine wear for men, women, and children; also ladies' ribbed vests and drawers in merino and all wool, in white and natural wool.

"For sale by all the leading retail houses."

Marked Exhibit J J.

Q. I show you another (handing witness a paper).

A. This is from the Century magazine of October, 1888. I cut it out last evening from the magazine.

Counsel for collector offers in evidence from the page of the Century magazine referred to, under the head of "wearing apparel," the advertisement of the Diamond Shirt Company as follows:

"Why not buy of the manufacturer?

"We make a specialty of fine work at reasonable prices. White shirts, plain, plaited, embroidered; full-dress pique, white and fancy, with collars and cuffs to match; Madreas cheviot, French percale, Scotch gingham; flannel overshirts in great variety. Fine unshrinkable and fancy flannel underwear, elegantly made.
227 Fine white and fancy flannel night robes for gentlemen and ladies. Paragon weather vests, handsomely made, perfect-fitting, from fine flannel and chamois; a sure protection against rheumatism, lung troubles, and pneumonia; a most comfortable garment for ladies or gentlemen. Price, $3.00. Sent by mail. Send for samples, price-list, and measure-blanks.

"Diamond Shirt Co., Bridgeport, Conn."

Marked Exhibit K K.

Q. I show you another (handing witness a paper).

A. I cut this from the Century Magazine for the month of January, 1889, last evening.

Counsel for collector offers in evidence from the page of the Century Magazine referred to advertisement of Denny, Poor & Co., New York and Boston, as follows:

"Chalon cloth. A new wash fabric produced by the Johnson M'f'g Co., North Adams, Mass.

"The Chalon cloths will commend themselves to critical and fastidious buyers as possessing all the styles and durability of foreign goods.

"All the dry-goods houses sell them."
Marked Exhibit L L.

Q. I show you another (handing witness a paper).
A. This I cut from Harper's Magazine for the month of January, 1889, last evening.

Counsel for collector offers in evidence from the page of Harper's Magazine referred to advertisement of Denny, Poor & Co., New York & Boston, as follows:

"Toile du Nord, season 1889"—

"The most desirable dress fabric for ladies' and children's summer wear."

228 "Produced by the Parkhill M'f'g Co., Fitchburg, Mass. Sold by every dry-goods house in the country."

"The genuine fabric has the names of the manufacturers and selling agents on each end of every piece."
Marked Exhibit M M.

Q. I show you another (handing witness a paper).
A. This I cut from the Century Magazine for October, 1887, last evening.

Counsel for collector offers in evidence from the page of the Century Magazine referred to, under the general heading "Wearing apparel," the following:

"Dr. Warner's health underwear, made of two qualities, selected camel's hair and pure natural wool. Manufactured in all styles of gentlemen's, ladies', and children's underwear and night shirts. For sale by leading merchants. Catalogue with prices sent on application.

"Warner Bros., 359 Broadway, N. Y.

"Cleanfast black stockings, positively will not crock.

"The F. P. Robinson Co., Boston. For sale by the Cleanfast Hosiery Co., 927 Broadway, New York; 49 West street, Boston; 107 State street, Chicago.

"The famous custom-made Plymouth Rock $3 pants (full suits and overcoats).

"Plymouth Rock Pants Co., 18 Summer street, Boston, Mass."
Marked Exhibit N N.

Also from the Commercial Advertiser for September 30, 1890, advertisement of Arnold, Constable & Co., Broadway and 19th street, as follows:

229 "Arnold, Constable & Co. Fall hosiery and underwear, Cartwright & Warner's celebrated underwear. Ladies', men's, and children's merino, silk, silk & wool, all wool, camel's-hair, and natural wool underwear. Ladies' union suits.

Ladies' and children's real balbriggan hose, black, warranted fast color and stainless. Embroidered and open-work silk hose."
Marked Exhibit O O.

Also from the Commercial Advertiser of May 21, 1890, advertisement of Arnold, Constable & Co., as follows:

"Furnishing dep't. Misses' and children's suits, reefers, ulsters,

and jackets. Infants' outfits, ladies' silk shirts and blouses. Dressing sacques, matinees, tea gowns, imported and domestic underwear, wedding trousseaux."

Marked Exhibit P P.

Also from Brooklyn Daily Eagle for May 27, 1890, advertisement of Journeay & Burnham, as follows:

"Journeay & Burnham, importers of and dealers in fine dry goods, 124, 126, and 128 Atlantic avenue."

"Morley's celebrated hosiery and underwear."

Marked Exhibit Q Q.

Also from the Evening Telegram for April 1, 1891, advertisement of Rogers, Peet & Co., as follows:

"Poor cloth, carelessly cut, lined with flimsy stuff and sewn with cotton thread, may be made to look pretty well at the start, but when the lad begins to get in his work, or rather play, what's left? Experienced mothers answer, 'tatters.'

"We take great care in making boys' cloth-s, whether the garment be one of moderate cost or rather extravagant.
230 Only durable fabrics, serviceable linings, and silk thread are used."

Marked Exhibit R R.

Also from the Evening Telegram of March 30, 1891, advertisement of Arnold, Constable & Co., as follows:

"Hosiery, ladies' real balbriggan hose, warranted fast black and colors. Ladies' plain, ribbed, and open-work lisle-thread and silk hose. Ladies' and children's spun-silk hose. Cotton hose and half hose. Spring underwear. Cartwright & Warner's merino, silk, and llama wool, natural wool mixtures, full suits to match. Ladies' Swiss ribbed vests and union suitings. Broadway and 19th street."

Marked Exhibit S S.

Also from the New York Daily Commercial Bulletin of March 16, 1891, under the dry goods trade column, the following:

"Gingham and woven wash fabrics. Fine dress ginghams, fine zephyrs, seersuckers, chambrays, imitation flannels, etc., were in fair reassortment demand at first hands, with light purchases by package buyers, but a good distribution on account of previously recorded orders.

"There was no change in prices, and agents quote full current rates for all leading makes of both cotton and woolen fabrics, while from the country collections are reported as progressing satisfactorily.

"'Softer than the finest of old linen,' says a contemporary, 'and containing all the virtues of silk underwear, is the new knitted fabric made of waste silk, and known as Brown's pure silk sponge. The pure silk before it is bleached or dyed is knitted into a thick, light Jersey-like cloth, very elastic and warm and durable.
231 It washes readily and never shrinks. To provide perfect circulation, the fabric is knitted in open-work designs. Its appearance is slightly rough, but after one or two washings is thoroughly satisfactory. It is a comfortable, warm, and cleanly material for underwear, blankets, skirts, etc., surpassing for such

purposes the very expensive silk underwear stuff. It can be joined to suit requirements, and the seams, when sewed with silk twist, are not bunchy like wool or cotton.'

"The fabric comes in three widths and retails at 35 cts., 45 cts., and 55 cts. per yard, according to width. Its admirers regard it as the true sanitary fabric."

Marked Exhibit T T.

Also from the New York Daily Commercial Bulletin of March 14, 1891, under the column headed "dry-goods trade," as follows:

"An authority on dress fabrics says that 'Cote de cheval, both in mixed and plain colors, is said to be winning great favor of the trade because of its near resemblance to corduroy, though of an extremely light weight, thus answering the purpose of a summer fabric, while the peculiar ribbed effect due to the manner in which it is woven gives it a very novel appearance, and novelty takes in anything.'"

Marked Exhibit U U.

Also from the New York Daily Commercial Bulletin of March 9, 1891, as follows:

"Cotton goods.—There was a moderate demand for staple cotton goods on the spot and fair orders by mail and wire, but no particular class of fabrics showed any activity.

"'The old-fashioned corduroy,' says the British Ware-
232 houseman, 'which for many years has been pretty strictly confined to navvies and drain-diggers, has been brought forward in Berlin and Paris as a fashionable material for ladies' dresses. It seems singular that a fabric at once so soft and strong should have been held in abomination so long by all except the poorest people.'"

"It was spoken of a year or two ago as a novelty in dress fabrics, but it did not then take."

Marked Exhibit V V.

Also extract from circular to collectors and other officers of customs, dated December 31, 1847, as follows:

"The exemption from duty of wearing apparel provided in Schedule I, to be confined, as declared in circular instructions of the 12th of April, 1847, to such articles as are generally worn and are not deemed merchandise within the meaning and intent of the law, and to be limited to an extent not exceeding in number, quantity, or value what is usual for a traveller or person to wear or carry with him for actual use."

Also from published Treasury decision of October 21, 1861, as follows:

"I have had under consideration your report on the appeal of C. A. Thudium from your assessment of duty at the rate of twelve cents per pound and in addition thereto 25 per cent. ad valorem on woollen jackets made on frames and hand knit, open in the front, with buttons and sewed button-holes and pockets, as being provided for in the second clause of section 13 of the tariff act of March 2, 1861, the appellant claiming entry of the articles in question at the

rate of 30 per cent. as hosiery. These articles were, in
233 my opinion, properly classed by you upon entry under the provision for clothing, ready-made, and wearing apparel of every description composed wholly or in part of wool made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, and your decision subjecting them to duty at the rate of twelve cents per pound and in addition thereto twenty-five per centum is hereby affirmed.

(Signed) S. P. CHASE,
Secretary of the Treasury.

To William B. Thomas, Esq., collector, etc., Philadelphia, Penn.

Counsel for importers object to the introduction of the above exhibit as having no connection whatsoever with this case and as being a decision which was made under a state of the law which does not now exist.

Also decision of the Treasury Department, May 4, 1863, as follows:

"SIR: Messrs. Jordan, Marsh & Co., of Boston, appealed from your decision assessing duty at the rate of 35 per cent. on certain cotton shirts imported by them per steamer Jura and claimed to enter them at 30 per cent., saying that the law expressly provides that shirts and drawers shall pay that rate of duty. The act of March 2, 1861, imposes a duty of 25 per cent. and section 10 of the tariff act of July 14, 1862, imposes an additional duty of five per cent. on shirts and drawers woven or made on frames, composed wholly of cotton, etc. The act of March 2, 1861, imposes a
234 duty of 30 per cent. and section 13 of the tariff act of July 14, 1862, imposes an additional duty of five per cent. on wearing apparel of whatever description, of whatever material composed, except wool, made up or manufactured wholly or in part by tailor, seamstress, or manufacturer. The question which presents itself is, To which of these two classes the shirts imported by Messrs. Jordan, Marsh & Co. properly belong? The shirts are known to the trade as patent finished shirts composed wholly of cotton and are manufactured by the tailor or seamstress from cloth in the piece, with the exception of the sleeves, which are woven without seams, then shaped to fit the arm-holes and afterwards attached by sewing to the body of the shirt. It is quite clear they are not shirts woven or made on frames and, in my opinion, were properly classified by you under section 13 of the tariff act of July 14, 1862, and are subject to duty at the rate of 35 per cent. ad valorem. Your decision is hereby affirmed.

Very respectfully, GEORGE HARRINGTON,
Acting Secretary of Treasury.

To the collector at Portland, Maine.

Counsel for importers objects to the above exhibit on the same grounds before stated, and also that the goods therein mentioned were cotton goods and came under a different control from that effected by the present statute.

Also from Treasury decision, February 3, 1864, as follows:

235 "SIR: Messrs. S. Herman & Co. have appealed from your decision assessing duty at the rate of 18 cents per pound and 30 per cent. ad valorem on certain shirts imported by them from Liverpool, per ship Stad Assn. The appellants claim that wool is not the component material of the article in question, but that wool waste is, and that consequently the shirts should be admitted to entry under section 22 of the act of March, 1861, and section 13 of the act of July 14, 1862, imposing together a duty of 35 per cent. ad valorem upon clothing ready made and wearing apparel of every description, of whatever material composed except wool, made up or manufactured, etc. The experts of the customs report in substance as follows: The sample shirt is composed of wool and cotton, and being wearing apparel or clothing is therefore under existing laws (section 13 of the act of March, 1861, and section 9 of the act of July, 1862) subject to a duty of 30 per cent. ad valorem and 18 cents per pound. Your decision is hereby affirmed.

Very respectfully, S. P. CHASE,
Secretary of the Treasury.

To Charles James, Esq., collector, San Francisco, Cal."

Same objection.

Also from Treasury decision of October 11, 1865, as follows:

"SIR: The point involved in the appeal is a question of fact as to material. The appellant claims that the gloves referred to are composed in part of worsted. The experts for the customs insist
236 that they are composed in part of wool, and in that opinion the appraisers agree. The rate of duty is therefore at once determined by the plain provision of the law to be 20 cents per pound and 30 per cent. ad valorem on shirts, drawers, and hosiery of wool or of which wool shall be the component material not otherwise provided for; but for this hosiery clause the goods in question would have been liable to a duty of 24 cents per pound and 40 per cent. ad valorem as wearing apparel in part of wool under the second subdivision of the section and act above quoted. Your decision is hereby affirmed.

Yours respectfully, J. F. HARTLEY,
Assistant Secretary of the Treasury.

To Hon. Preston, King, collector, New York."

Same objection.

Also from the published volume of Treasury decisions for the year 1873, No. 1638, as follows:

"Suspenders composed in part of worsted held as in previous ruling upon analogous cases to be dutiable at the rate of 50 per cent., etc., under section 2 of the act of 1867 relating to wearing apparel of every description composed wholly or in part of wool or worsted, etc." (Letter to the collector of the port of New York, September 26, 1873; appeal 342, B.)

Also synopsis of Treasury decision No. 7255, dated December 15, 1885, as follows:

"SIR: The Department is in receipt of your letter of the 9th inst., referring the application of Mr. Albert Foster for the free entry of certain underclothing, handkerchiefs, and gloves brought by him into your district. You report that the articles in question were
237 taken from a trunk turned over to your office by the railroad company for inspection, and that in the absence of the owner the articles were taken out, appraised, duties levied, and the owner notified in accordance with your usual practice in cases where baggage is not accompanied by the owner. The department is of opinion that where ordinary articles of clothing not in excessive quantities are found in the trunk of a traveller it should be presumed that they are free as wearing apparel and they should be delivered without payment of duty. You are therefore authorized to deliver the articles in question to their owner free of duty.

Respectfully, C. S. FAIRCHILD, *Secretary.*

To the collector of customs, St. Vincent, Minnesota."

Cross-examination of JAMES D. ANDREWS:

By Mr. KETCHUM:

Q. You are a merchant, I suppose?
A. No, sir; not at present.
Q. Have you ever been a merchant?
A. Yes, sir.
Q. How long ago?

Counsel for collector objects to the cross-examination of this witness on any subject not connected with his direct examination.

Q. What is your business?
A. Entry clerk in the naval office of United States customs service.
Q. How long have you been an entry clerk in that office?
A. I could not tell you how long I have been an entry clerk. I have been eighteen years in the service as a liquidator and
238 entry clerk; probably two-thirds of the time as entry clerk.
Q. You don't remember how long you have been an entry clerk.
A. I could not give you the date of that. Probably as much as twelve years.
Q. You still occupy that office?
A. Yes, sir; and acting deputy naval officer.
Q. That last office brings you into frequent consultation with the chief deputy naval officer, does it not?
A. Yes, sir.
Q. Have you advised with him officially with respect to the exaction of duty upon the goods covered by the invoice now under consideration?

Objected to on the ground that if the witness has advised with the chief deputy it is a privileged communication between officials of the Government and not bound to be disclosed by the witness.

A. I don't know whether it was officially or not. I have advised with him.

Q. Have you been present during all the investigation of this question before General Appraiser Sharpe?

A. To the best of my information and belief, I have.

Q. And you have assisted the district attorney to the best of your ability?

A. I have not been here recognized as his assistant.

Q. But you have assisted him as far as you could?

A. He is a better judge of that than I am.

Q. You have tried to assist him?

A. I don't know even that I have done that. I have, perhaps, been of some aid or assistance, but how much he could judge better than I could.

Q. It is your opinion that the general appraisers erred in their decision in this case?

239 Mr. PLATT: I advise the witness not to answer that question.

Mr. KETCHUM: Pass it by.

Q. How did you come to get hold of the magazine from which you have extracted these slips that have been offered in evidence?

A. I happened to notice them in the bookcase.

Q. What bookcase?

A. In my sitting-room, in Sheepshead Bay, Kings county.

Q. When did you happen to notice them?

A. Last evening; I happened to notice them there and I thought I would take them down and see what line of advertisements I would find in the advertising department.

Q. Was not that with special reference to producing what you might find as testimony in this case?

A. I did not know but what it might be useful in this case. I thought I would submit them to the district attorney.

Q. As matter of fact, the collector of this port favored the adoption of the report of the board of general appraisers, did he not?

A. I never conversed with the collector of the port on that subject.

Q. Have you any knowledge of the official action?

A. I have no knowledge of the official action; no official knowledge. I have hearsay knowledge, but no official knowledge of what the collector's action was.

Q. Were there not communications from the naval office to the Secretary of the Treasury protesting against——

A. I am not the medium of communication between the two offices. That is done by official papers that do not pass through my hands.

Q. Have you been assisted in the investigation in this case by Mr. James Talcott?

240 A. None whatever that I know of. He has not offered me any assistance.

Q. Have you asked any from him?

A. I called his attention to the fact that the American manufacturers had not been represented so far as I saw in the investigation, but that I had been informed it was through their own neglect; that they had been notified but had not appeared. He said he had not been notified.

Q. Who informed you of that?

A. Col. George C. Tichenor, the president of the board of appraisers, notified me of that fact.

Q. Did he inform you that the domestic manufacturers had not been represented?

A. He told me that the domestic manufacturers had been requested to be present.

Q. Did he inform you that they had not been properly represented on the hearing?

A. I could not say what his language was. He said if they had not been represented it was their own fault. That, I think, was the remark that he made.

Q. That is true—if they had not been, then it was their own fault?

A. Yes; I don't think he said whether they had or had not been. Mr. Talcott, if you wish his evidence—this is hearsay testimony—told me that he had not been notified and was not aware of it.

Q. This cutting from the Century magazine of October, 1887, has at the head of it the words "wearing apparel," and among the things that it has below is an advertisement with regard to Plymouth Rock pants. That is true, is it not?

A. I can tell by looking at it (looking at the exhibit). That has Plymouth Rock pants there; yes, sir. It also seems to

241 have—do you wish me to describe it?

Q. I did not ask you to; you have described that pretty well already. Now, from the Century magazine of January, 1889, headed "dry goods," we find a slip which has at the top of it "Chalon cloth," and then below it says, "A new wash fabric produced," etc. Then below that it says, "Chalon cloths will commend themselves," etc. Now, have you any opinion as to whether this wash fabric is a cloth or not?

Objected to on the ground that the witness is not shown to be competent.

Q. Let me ask you whether that is the fact or not with reference to this exhibit (handing witness the exhibit).

A. The word cloth is so broad that I suppose——

Q. I did not ask you that—how broad it was or how narrow—twenty-three inches or eighteen and a half; I asked you another question.

A. I cannot have anything but an opinion that it is cloth, because it says it is a cloth. I don't know how I can dispute the state-

ment. It is said to be a cloth, but known as a fabric; it is plain English.

Q. Please state to me whether I am correct according to your reading of the extract from Harper's Magazine of February, 1890. Somebody has underscored three words. "Underwear" is underscored twice, and "fine underwear" is underscored also. Is that correct?

A. I find that "underwear" is underscored twice and "fine underwear" once on this exhibit.

Q. On the exhibit from Harper's Magazine of January, 1890, at the middle I see "black-silk warp Henrietta cloth." I don't suppose you know what that is?

A. Yes, sir; I am familiar with it; I have bought and sold it.

242 Q. Will you please tell us what it is?

A. Henrietta cloth, silk warp, is an article of apparel, rather a fabric you may call it, as it is generally termed in the trade, a dress fabric which has a warp of silk and a weft or woof of wool. They sometimes are all wool and sometimes wool and silk—silk-warp Henrietta. The silk warp is a little more expensive. I have not sold them, but I have bought them.

Q. What is the texture?

A. The Henrietta?

Q. Yes.

A. What do you mean by texture?

Q. I mean texture.

A. It is a woven texture.

Q. It is not knit, is it?

A. Not knit.

Q. The only word or phrase in this exhibit which seems to be underscored is a phrase that occurs in connection with Henrietta cloth, "black woolen fabric for ladies' wear." I am correct in that, am I?

A. It says, "A black silk-warp Henrietta cloth is the most serviceable and the most desirable black woolen fabric for ladies' wear."

Q. Let me ask you whether your official position is one that requires your personal efforts or attendance at this hearing.

Objected to as irrelevant, incompetent, and impertinent.

Q. Have you been specially detailed for this duty; if so, by whom?

Same objection.

Q. Why have you been to the pains of looking up all the authorities which have been produced here, as I should judge, through your efforts?

Same objection.

243 Q. Does that effort on your part have any connection with the duties of your desk at the naval office?

Same objection.

Q. Are you connected with the law department of the custom-house?

Same objection.

Q. Have you engaged in your apparent service here by order of the collector or your superior officer?

Same objection.

Counsel for collector offers in evidence from Webster's International Dictionary of 1890, also from Webster's American Dictionary of 1880, Appendix, the definition of the word "underwear," as follows:

"That which is worn under the outside clothing—underclothes."

The collector rests.

Counsel for collector suggests that the testimony now to be given by the importers should be taken as a separate record, being taken under a separate order.

Counsel for importers state that they will offer testimony under the first order, and if counsel for collector objects to that it will be offered under the second order.

244 THOMAS OSBORNE sworn and examined as a witness for the importers.

By Mr. KETCHUM:

Q. What is your line of business?
A. Hosiery manufacturer.
Q. How long have you been engaged in that line of business?
A. Since July, 1864.

Counsel for collector objects to the right of the importers to produce any further evidence, after having given evidence before the board of general appraisers, and the board of general appraisers having decided the case in their favor.

Counsel for importers in reply states that this is an appellate proceeding, by which the collector has been permitted to go beyond the scope of the evidence offered upon the original hearing, and the importers therefore claim the right to rebut the evidence which has been given upon the additional points.

Q. By hosiery I presume you refer to the lines of goods represented by the importers' samples which have been introduced here—that is, it is not confined to socks and stockings?

Objected to, the witness not having been shown to be competent or not having been shown to be a manufacturer in this country.

Q. This sample No. 1 of the importer, a shirt, is that included within the category of hosiery?

Same objection.

A. It is very simple. It has got the manufacturer's name

on. It is manufactured in the same country where we
245 manufacture our goods.

Q. That is hosiery, is it not?

A. In England this is generally hosiery.

Counsel for the collector moves to strike out the answer as irresponsive and immaterial.

Q. What is it called in this country?

Objected to on the ground that the witness is not shown to be competent.

A. There is a distinctive term here, "Underwear."

Q. You have sold such goods to parties in this country, have you not?

Same objection.

A. A great many.

Q. You have been a manufacturer for a great many years, as I understand it, of such goods as that article which you are looking at?

A. I was brought up in a factory where similar goods were made from 13 years of age.

Q. I would like you, if you are able to do so, to give me the cost of the different items connected with the manufacture of a shirt like that, Exhibit 1, the cost of the yarn, the cost of the labor in the knitting, the cost of the trimming, the cost of the dyeing, &c.—all the items—on the basis of a percentage of 100.

Objected to on the ground that the witness has not been shown to be competent to answer the question.

A. I shall have to give it to you in the net amounts paid out for the different items by the manufacturer.

Q. That is what we want.

A. That is not the price the importer would pay for the article.

246 Q. Not at all. It is upon the basis of a theoretical 100 per cent. You make that, of course, represent what it cost the manufacturer to make the article, because that is the very basis of the inquiry?

A. I simply don't know what amount of profit the manufacturers would put on.

Q. It is not necessary to put that in. The actual cost price?

A. I can give it to you probably within a half per cent. of each amount.

Q. Well, as near as you can?

A. I have looked this shirt carefully through. It is a 26-inch shirt, rather an off size. We always give the cost on a 38-inch shirt, and I prefer to give it to you in that way; that is the average size—38 inches.

Q. You can give us 38 inches and then make any comparison you think proper with regard to 36 inches.

A. It is not done in a few minutes, you know.

Q. Take your time.

A. Can you point out in what way, particularly, you want it divided? There are a good many items altogether in a shirt; the yarn is the chief.

Q. First the cost of the yarn.

A. I have a sample myself to-day in the city like that, with a slight variation. I have got the particulars of it. Will that do?

Q. Yes.

A. The yarn is about 58½ per cent., within a half per cent., of the total cost. I should like to make that clear. It is knitted by steam power. The man that knits it is paid about 13½ per cent. of the total cost, and it costs 4½ per cent. to drive the machine he works, which is a portion of the labor, of course, or he could not produce it; the seaming is 4½ per cent.; scouring or cleaning or dressing
247 after it comes off the machine is five per cent.

Q. That scouring comes in for the purpose of cleaning the wool, does it not?

A. Well, the machine dirties the yarn in producing the fabric. It has to be scoured to purify it and clean it.

Q. I simply want to call attention to the fact that that does not come in as one of the finishing expenses that have been described here. It comes in in connection with the knit material.

A. There is a lather and sometimes oil used over the yarn; that has got to be got out or the garment would not be perfect.

Q. Now, the next item?

—. The next is this front, this opening—I don't know what you call it here, I have almost forgotten—and putting this material on the back here and the buttons and the silk and the sewing. The cost of this stuff, speaking of the English prices, because we buy the stuff there, is about 3½ per cent. We pay two shillings a dozen in England for the making up; that is 4½ per cent. of the total. We also put these goods in boxes, and there are bands used, paper, strings, and all that sort of thing; that is 5½ per cent.

Q. It is all right for you to state that fact, but that would not be included in the cost of manufacturing a single one?

A. Providing the shirt came out without that box, no.

Q. I understand you perfectly. It is all right. Now, will you please give a similar analysis of cost in connection with these
248 black and brown stockings that I hand you from the importers' exhibit?

Objected to as immaterial and also that the witness is not shown to be competent.

A. I was only speaking about this imported shirt.

Q. It has the name of Cartwright & Warner?

A. Cartwright & Warner; yes, sir; but then the relative cost of that might be different here. I don't know anything about that.

Q. Certainly the customs duties are only placed upon imported articles and not on domestic?

A. Yes.

Q. That is what the duty is put on, and it is perfectly right for you to speak of the imported article rather than the domestic. Now, in regard to Exhibit 10?

A. These goods vary in what we call gauges. There are some very close together. You are setting me rather a difficult job here with these fine goods.

Q. If you have not made the calculation, all right.

A. A customer often brings me in something like that and asks me how much I could make so many dozen for. Then I have to look at a sample of my own and compare them.

Q. Can you tell approximately as between the shirt and the stockings with respect to the cost of finishing, sewing, if there is any, as compared with the total cost of bringing the article to that point where the sewing is necessary?

Same objection.

A. The yarn is a very large proportion of the cost of this stocking, Exhibit No. 10. I should want to weigh it and count it.

249 Q. Roughly, what would you say?

Objected to.

Q. Would the relative cost of the yarn, &c., be greater in the stocking than in the shirt?

Same objection.

A. In that case, yes.

Q. Can you tell the proportionate cost of the seaming of that stocking as compared with the whole cost?

A. Very closely, I think; in this individual case the seaming cost is very low owing to the manner in which it is done. It is done by a very fast process.

Q. What percentage of the total cost did you say was the seaming?

A. Of this complete as it is?

Q. Yes.

A. Net cost?

Q. Yes.

A. And the percentage of cost of the seaming?

Q. Yes.

A. I don't know; it is very small; I should say five per cent., so as to give it to you fully or less.

Counsel for collector objects to all this line of testimony.

Q. Not greater than five per cent.?

A. No.

Q. How would it be in regard to the brown sample of stockings? About the same, more or less—the seaming as compared with the total cost?

A. The seaming would cost no more, but the yarn is more expensive. The percentage would be less, I think, than in the other.

Q. Less than five?

A. Yes, sir.

Q. Would the same be true of these samples, which are socks (handing witness Exhibits 8, 9, and 11)?

250 A. They are very different; they are different classes of goods; they are different classes of seaming, even, but I don't know how far I might say. Five per cent. will cover the percentage of the cost in the goods we send to this country.

Q. Your goods correspond in general character to those you are looking at, do they not?

A. Yes, sir; we make those goods.

Q. Now, as to the clocking on the socks that you have in your hand. Is that put on of necessity or for ornament?

A. It is sometimes on and sometimes not. It is fancy, I suppose.

Q. Mere ornament?

A. Ornament, I suppose. It certainly is not useful, but ornamental.

Q. What percentage of expense would that cost relatively just for the clocking?

A. Which particular one?

Q. That one you have now, No. 9.

A. The clocking causes this to go through another process, to shape it, the woman's hand going in the side. Is that to go on? She has to straighten the fabric out, puts her hand inside and turns it upside down.

Q. You might give the whole expense of that, the two items, the clocking and the other work.

A. It does not make a great deal of difference. It is from 23½ to 25 per cent.

Q. Of the total cost of the sock?

A. Yes, sir.

Q. Now, won't you look at Exhibit 2, which is a pair of drawers, and tell us as to the relative cost of the items just as you did in respect to the shirt?

251 A. This is known as a suit, I suppose; they go together; they are about the same fabric; they are the same thing; the yarn, 54½ per cent.; the knitting and the workmen, 16 per cent.; the expense for driving the machine, 4½ per cent.; seaming, 4 per cent.; scouring or cleaning, 4½ per cent.; the other materials used here, 6 per cent.; the labor in the other materials, 4½ per cent.; boxing, 4½ per cent.; that is really 98½ per cent., but we cannot figure this out to one-sixteenth per cent. on each item. I would like to say that this is roughly divided, in our minds, into two items—the yarn, 54½ per cent., and the other item, 45½. That is the way we chiefly look at it.

Q. Here is a sample of the importers, No. 3; will you please give us the items of cost with respect to that?

A. I don't think that I could do that, not to give you the cost of production, but I could give you some idea of the percentage of the different items. In what way do you want it?

Q. Compare the cost of the knitting, the labor of knitting, the

machinery for knitting, and the dyeing, with the finishing expenses, sewing, if there is any?

A. I have not made anything of that sort; I could not give you a very good idea of it; and besides this is dyed; the other is an ingrain article; it would make a considerable difference. You can pay all sorts of prices for dyeing. I would not like to say much about that.

Q. Leaving out the dyeing, could you tell us?

252 A. I don't understand in what way you want to divide this quite.

Q. The seaming, the tape, &c.?

A. I don't feel satisfied to speak very closely on this. That is rather a special thing. There is nothing to do with this after it comes off the machine but to seam it and put a bit of tape on.

Q. There is nothing woven on that except the tape, is there?

A. No, sir.

Q. Now, this union garment No. 10; will you, if you can, give us the cost of the items respecting that?

A. This is made on the latest and most improved machinery. I should want a little reference to know about this. We have only just begun to make those goods.

Cross-examination by Mr. PLATT:

Q. Where is your factory located?

A. In what country?

Q. What country?

A. England.

Q. The figures that you are giving on these goods are the figures over there, are they?

A. Yes; what we should pay ourselves.

Q. How long have you sold such goods to buyers in this country?

A. You don't particularize any single one?

Q. No; generally.

A. Hosiery?

Q. What you call hosiery; yes.

A. Hosiery and underwear.

Q. Goods of this character?

A. Since 1877, 13 or 14 years.

Q. Have you sold any to Arnold, Constable & Co.?

A. Not lately.

253 Q. During those years?

A. We have done —, yes; not for many years now.

Q. What is the name of your firm?

A. Have I to answer that question?

The REFEREE: The business name of your firm?

The WITNESS: I am not a member of the firm and I have not their permission to use their name.

Mr. PLATT: I want to know where this man comes from and what firm he represents.

The REFEREE: I think the witness ought to answer the question.

Mr. KETCHUM: Are you ready to answer the question or do you prefer not to?

The WITNESS: In the interests of justice I would answer it. I would prefer not to. It doesn't make any difference.

Mr. KETCHUM: This decision having been made by the general appraiser, you feel at liberty to answer in the interests of justice?

The WITNESS: I will answer, certainly, in deference to your honor.

Q. What is the name of your firm?

A. I. & R. Morley.

Q. You ship largely to James McCreery & Co., in this country, don't you, such goods as these?

A. Hosiery more than this, known particularly as underwear.

Q. You ship both underwear and hosiery largely to this country, don't you, your house?

A. Yes, sir.

Q. And have for how many years?

A. It has varied and fluctuated. Since 1877 when I first came here.

254 Q. Are you over here in the interest of your house?

A. Yes, sir.

Q. And are you interested in seeing that goods of this character come into this country at as low a rate of duty as possible in the interests of your trade?

A. I don't say so; no.

Q. You don't say so?

A. I don't say so; no.

Q. Tell us what you think.

A. It is a very open question. I cannot give you an answer, yes or no, to that. There is a great deal of argument to that question.

Q. We will not press it. Now, those clocks on the stockings—they help sell the goods, don't they?

A. At one time they did. Lately I have heard importers say that they were worth as much without them as with them.

Q. You have never bought and sold these goods in this country, have you?

A. I do sell them in this country.

Q. I know you sell your goods, but you have never bought and sold them here as a merchant—you have never bought goods here to sell again here?

A. No, sir.

Q. You simply sell the product of your manufacture over there?

A. Yes.

Q. What are your particular duties in connection with this concern over in England? In what part of England is your factory located?

A. In Nottingham.

Q. What have been your particular duties in connection with this firm?

A. Now—at present?

Q. What have been—yes.

A. When I first went there I was employed in the factory amongst the machinery entirely, then in the warehouse in connection
255 with the shipping—taking orders and that sort of thing.

Q. Have you got any billheads or invoices or anything of that kind with you covering this class of goods—the importers' exhibits?

A. I don't think I brought a card with me. I did not think I should need it. Would that meet your wishes (handing counsel a card)?

Q. That is one of your personal cards? I mean the business card?

A. It is the only one I have, unfortunately.

Q. Have you any business card containing any list of the articles that you sell and ship?

A. I never carry such a card as that; not the particulars; only a small card.

256 JOHN J. K. COORD sworn and examined as a witness for the importers.

By Mr. KETCHUM:

Q. What is your business?

A. Ready-made clothing business.

Q. With what firm are you associated?

A. Rogers, Peet & Co.

Q. What is your particular province in connection with that business?

A. Buyer of the woolens and superintendent of the sale of manufactured garments.

Q. What garments does your firm sell?

A. Overcoats, ulsters, coats, pants, vests, and trousers, as articles which they manufacture.

Q. Those they manufacture as well as sell?

A. They also buy and sell underwear, hosiery, gloves, neckwear, &c., comprised under the head of gents' furnishings.

Q. Now, will you tell me whether the word "clothing" has any special significance in trade and commerce?

A. It does.

Q. What is the meaning of it?

A. Clothing means garments manufactured out of cloth into ulsters, overcoats, coats, vests, and trousers.

Q. They are all outside garments?

A. Outside garments. That is comprised in the general word "clothing."

Q. That is the trade significance of it, as I understand you?

A. Yes, sir.

Q. The phrase "ready-made clothing" is sometimes used.
257 Will you tell us what is understood in the trade by clothing, ready-made?

Objected to on the ground that the witness is not shown to be competent.

A. Garments already manufactured previous to the want of the customer.

Q. Another phrase for it is goods held in stock, is it not?

A. Certainly they must be held in stock if they are manufactured previously to the wants of the customer.

Cross-examination by Mr. PLATT:

Q. Do you deal exclusively in men's and boys' clothing?

A. Men's, boys', and children's.

Q. What is your position in the firm of Rogers, Peet & Co.?

A. General superintendent.

Q. Do you keep undershirts and drawers for sale?

A. Yes, sir.

Q. Stockings?

A. Yes, sir.

Q. Scarfs?

A. Yes, sir.

Q. Cuffs and collars?

A. Yes, sir.

Q. How many years have you been with Rogers, Peet & Co.?

A. 15 years the 1st of November.

Q. Is that one of their advertisements that I show you (handing witness a copy of the Evening Telegram)?

A. Certainly.

The exhibit referred to is marked for identification.

Q. Do you sell any article of clothing that is made from a knitted fabric?

A. We consider that our underwear and hosiery, half hose, are knitted goods.

258 Q. Do you sell any smoking-jackets that are made out of a knitted fabric?

A. No, sir.

Q. Do you sell any cardigan jackets?

A. We sell cardigan jackets.

Q. That is made from a knitted fabric, is it?

A. Yes, sir.

DANBY DARKE sworn and examined as a witness for the importers.

By Mr. KETCHUM:

Q. What is your business?

A. Merchant tailor.

Q. Do you make coats, overcoats, trousers, and vests?

A. Yes, sir.

Q. Do you make or deal in such articles as these importers' exhibits?

A. No, sir.

Q. Would you tell me what the word "clothing" means?

Objected to as immaterial and that the witness is not shown to be competent.

Q. Is your business making clothing?
A. Yes, sir.
Q. Exclusively?
A. Yes, sir.
Q. Is the word clothing a general term known in the trade?

Same objection.

A. Yes, sir.
Q. What does the term clothing mean, what kind of article?
A. Overcoats, ulsters, coats, vests, and trousers.

Cross-examination by Mr. PLATT:

Q. Do you import any goods?
A. Yes, sir.
Q. What kind of clothing do you make?
259 A. Fine clothing.
Q. Of what materials or fabrics?
A. We make it of woolen goods exclusively.
Q. Do you make anything but men's clothing?
A. No, sir.
Q. Your definition, then, of the term clothing as you gave it referred to your particular trade, men's clothing?
A. Not necessarily. Men's clothing generally means coats, vests, and trousers and overcoats.
Q. Your idea is that there is no such thing as women's clothing?
A. Yes; there is.
Q. Do women wear pants, coats, and vests—your definition of clothing?
A. A lady wears riding pants; yes.
Q. Do you make those garments?
A. Yes, sir.
Q. Out of what?
A. Out of cloth.
Q. Do you make ladies' dresses?
A. No, sir.
Q. Cloaks?
A. No, sir.
Q. Or any other article of ladies' clothing except the ones that you have mentioned?
A. Only riding habits.
Q. Do you deal in scarfs?
A. No, sir.
Q. Is not a scarf an article of clothing?

Objected to on the ground that there is no scarf involved in this case.

A. I should not consider scarfs as clothing.

Q. You do not know that the Supreme Court of the United States once held that scarfs were clothing?

Objected to on the ground that sufficient foundation has not been laid for the question.

260 Q. Do you consider a shirt clothing—an outside shirt—such as you have got on there?

A. No, sir.

Q. Collars?

A. No, sir.

Q. Cuffs?

A. No, sir.

Q. Ladies' skirt?

A. I am not competent to give an opinion in regard to them.

Q. But you were competent to state what the term clothing covered; you thought you were on your direct examination?

A. Yes.

Q. Ladies' dress. Is that clothing?

A. I should not consider it so; not according to our opinion.

Adjourned to Friday, April 3, 1891, at 2 p. m.

In Re ARNOLD, CONSTABLE & CO.

Hearing resumed April 3, 1891.

Counsel for importers offers in evidence the following definitions:

Webster's Unabridged Dictionary.—"Knit. To form as a textile fabric by the interlooping of yarn or thread in a series of connected knots by means of needles, either by hand or by machinery; as to knit stockings."

Imperial Dictionary.—"Knit. To form by working up with wires or needles yarn or thread into a fabric held together by a series of knots; as to knit stockings."

Imperial Dictionary.—"Knitting frame. A sort of loom on which linen, silk, &c., is stretched for quilting or embroidery, or on which lace, stockings, and the like are made."

261 Century Dictionary.—"Knit. To form by working up yarn or thread with knitting needles into a fabric held together by a series of knots or interloopings; as to knit stockings."

Encyclopedia Britannica, 9th edition, vol. 12, page 299.—"Hosiery. Under this name is embraced a wide range of manufactured textiles, which are classed together more on account of their manner of fabrication than from similarity of application or use. The term, as is quite obvious, has its origin in hose or stockings, but, although stockings continue to be one of the staples of hosiery, that department is only one of a very numerous and diversified range of application of the entire industry, it having been officially stated that no fewer than 5,000 distinct articles are made in the trade. All kinds of hosiery proper are made by the process of knitting and the industry has principally to deal with the fabrication of knitted underclothing."

Counsel for collector objects to the above publication on the ground that it is from a British publication.

Webster's Dictionary.—"Fabric. That which is fabricated, as a frame work, structure, construction, edifice, building; the structure of anything; the manner in which the parts of a thing are united by art and labor."

Century Dictionary.—"Fabric. A structure of any kind; anything composed of parts systematically joined or connected; specifically, the structure or frame of a building; more generally
262 the building itself; an edifice. (2.) Any system of connected or interlaced cloths; as the universal fabric, the social fabric."

Imperial Dictionary.—"Fabric. That which is fabricated, as the frame or structure of a building; more generally the building itself; the structure of anything; the manner in which the parts are united by art and labor; workmanship; texture."

Webster's International.—"Knit. To form as a textile fabric by interlacing of yarn or thread in a series of connected loops by means of needles, either by hand or by machinery; as to knit stockings."

Counsel for collector offers in evidence the following definitions:

Webster's Unabridged Dictionary.—"Underclothing. Garments worn under the shirt for warmth."

"Underclothes. Clothes worn under others."

Webster's International Dictionary.—"Underclothing. The same as underclothes."

"Underclothes. Clothes worn under others, especially those worn next the skin for warmth."

Commercial Dictionary of Trade Products, Simmonds, 1883.—"Clothes. Clothing; a general name for articles of dress for animals; also personal attire; apparel."

McElrath's Dictionary of Phrases Used in Commerce.—"Clothes. Garments for the person. Articles of dress or apparel are not necessarily always clothes."

"Clothing. The essential parts of men and women's clothes; as coats, trousers, vests, shirts, petticoats, &c."

263 It is understood that the counsel for the importers may read in evidence on the trial of this case from the same authorities quoted by the counsel for the collector any further or other definitions of the same words that they may desire.

Counsel for the importers also claims the right to read definitions of the same words from other standard books of reference.

Counsel for collector objects on the ground that this reference is not yet closed and if counsel for importers desires an opportunity to present any further definitions of any words in connection with this case he is at perfect liberty to do so, either now or at an adjourned day.

Case closed.

264 In the Circuit Court of the United States for the Southern District of New York.

In the Matter of the Application of the Collector of Customs at New York for a Review of the Decision of the General Appraisers Concerning Certain Merchandise Imported by Arnold, Constable & Co. per "Alaska," Oct. 13, 1890. Suit No. 374.

Additional Return of the Board of United States General Appraisers. Dated New York, May 1, 1891.

The board of U. S. general appraisers return herewith the affidavit of Henry N. Palmer, which was presented to the board in the consideration of the above-entitled case, but, through inadvertence, was not made a part of the original return to said court.

CHARLES H. HAM,
GEORGE H. SHARPE,
WILBUR F. LUNT,
Board of U. S. General Appraisers.

265 Before the board of general appraisers.

In the Matter of Classification of Certain Importations of Knit Fabrics of Arnold, Constable & Co.

CITY AND COUNTY OF NEW YORK, *ss:*

H. N. Palmer, of said city, being duly sworn, makes the following statement:

I am in charge of the hosiery and furnishing-goods department of Passavant & Co., of said city. In the early part of April, 1890, a meeting was called of the various importers of hosiery and knit underwear for the purpose of proceeding to Washington in respect to duties on underwear and hosiery and to protest against a proposed advance of rates. At a meeting a committee of five were appointed to represent the importers present before the Ways and Means Committee. That committee deemed it best that one of their number should first proceed to Washington to arrange for the appearance of the full committee. I was the member chosen. I went to Washington; met Mr. McKinley and Mr. Dingley, of the Ways and Means Committee, and had conversations with them. A lengthy interview was had particularly with Mr. Dingley. In my interview with Mr. Dingley we used the words "fabric" and "fabrics" repeatedly in referring to knit hosiery and underwear. He used the word himself on several occasions when starting in to ask a
266 question or obtain my opinion respecting such goods as those described. He was constantly discussing such goods and no other goods in the interview I had with him. The term "apparel" or "wearing apparel" was never once mentioned or suggested in said conversations with Mr. Dingley or Mr. McKinley nor were those terms ever used afterwards in connection with hosiery or underwear at any of the interviews or conversations with the Ways and Means Committee on the subject.

The entire committee of importers met the Ways and Means Committee on or about the 24th of April, 1890, at which meeting there was a lengthy discussion of the whole subject of duties to be imposed upon knit hosiery and underwear. Domestic manufacturers representing the Knit Goods Association of Philadelphia were present, and in all the discussions and conversations between them and the committee and ourselves the words "fabric" and "fabrics" were repeatedly used in describing hosiery and underwear. They were specially employed in discussing the fine character of the present manufactured of such goods as now imported into this country, and, as before suggested, during our interview with the Ways and Means Committee the word "apparel" was never used, nor were the words "wearing apparel" used. There can be no doubt, therefore, that the Ways and Means Committee, in referring, as they did in the bill finally adopted, to "knit fabrics," intended to describe, as closely as language could do, the articles then
267 and now imported into the United States as hosiery and underwear.

HENRY N. PALMER.

Sworn before me this 29th day of December, 1890.

[SEAL.] VICTOR LEVI,
Notary Public, New York County.

Endorsed: 3152*a*. In the matter of an importation of wool knit hosiery by Arnold, Constable & Co. Affidavit. Suit 374.

Endorsed: No. 374. U. S. circuit court, southern district of New York. In the matter of the application of the collector, &c., at New York concerning certain mdse. imported by Arnold, Constable & Co., per "Alaska," Oct. 13, 1890. Additional return of record, evidence, and facts by board of U. S. general appraisers. U. S. circuit court. Filed May 2, 1891. John A. Shields.

268 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms, in the post-office building, in the city of New York, on the sixth day of May, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable E. Henry Lacombe, circuit judge.

In the Matter of the Application of the Collector of Customs at New York for a Review of the Decision of the U. S. General Appraisers as to the Rate and Amount of Duty on Certain Merchandise Imported by Arnold, Constable & Company, per "Alaska," October 15, 1890. Suit A, No. 374.

It appearing on the hearing of this case that an additional return was filed therein in the office of the clerk of this court on March 13, 1891, and also another additional return filed May 2, 1891, without any order of this court therefor and without notice to the attorney for the collector:

Now, on motion of Edward Mitchell, U. S. attorney and attorney

for the collector, and on the consent of the attorney and counsel for the importers—

It is ordered that the said two additional returns be, and the same are hereby, eliminated from the record in this suit, and the
269 clerk of the court is hereby ordered and directed to withdraw the same from the files of this court.

E. HENRY LACOMBE,
U. S. Circuit Judge.

Endorsed: "A," 374. U. S. circuit court, southern district of New York. In the matter of the application of the collector of customs at New York for a review of the decision of the U. S. gen'l appraisers on merchandise imported by Arnold, Constable & Co., per "Alaska," Oct. 13, 1890. Order. Edward Mitchell, United States attorney. U. S. circuit court. Filed May 6, 1891. John A. Shields, clerk.

270 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms, in the post office building, in the city of New York, on the thirteenth day of May, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable E. Henry Lacombe, circuit judge.

In the Matter of the Application of the Collector of Customs at New York for a Review of the Decision of the U. S. General Appraisers as to the Rate and Amount of Duty on Certain Merchandise Imported by Arnold, Constable & Company, per "Alaska," October 15, 1890. Suit No. 374.

The above cause coming on for hearing and determination before this court on the application of the collector of customs at the port of New York for a review of the questions of law and fact involved in the decisions of the board of U. S. general appraisers herein and on the return of the board of general appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decision thereon, and on further evidence taken under orders of this court before George H. Sharpe, Esq.:

Now, after hearing Henry C. Platt, assistant U. S. attorney
271 on behalf of the collector, for reversal, and Wm. B. Coughtry and Alexander P. Ketcham, counsel for the said importers, for affirmance, on motion of Edward Mitchell, U. S. attorney, it is—

Ordered, adjudged, and decreed that the decision of the board of general appraisers reversing the collector and holding that said merchandise was dutiable at 44c. per pound and 50 % ad valorem under paragraph 392 of the act of October 1, 1890, as "knit fabrics and all fabrics made on knitting machines or frames," was erroneous, and the same is hereby reversed and set aside; and it is further ordered, adjudged, and decreed that the said merchandise should have been classified and assessed for duty, as classified and assessed by the said collector, at the rate of 49½ cents per pound and sixty per

centum ad valorem as "articles of wearing apparel * * * made up or manufactured wholly * * * not specially provided for in this act * * * composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals," pursuant to paragraph 396 of the act of October 1, 1890, and not otherwise.

E. HENRY LACOMBE.

Endorsed: 374. U. S. circuit court, southern district of New York. In the matter of the application of collector of customs for a review of the decision of the board of gen. appraisers, &c. Judgment of reversal. Edward Mitchell, United States attorney. U. S. circuit court. Filed May 12, 1891. John A. Shields, clerk.

272 United States Circuit Court, Southern District of New York.

In the Matter of the Application of the Collector of Customs at New York for a Review of the Decision of the Board of U. S. General Appraisers as to the Rate, etc., of Duty on Certain Merchandise Imported by Arnold, Constable & Company, per Alaska, Oct. 13, 1890. Suit "A," No. 374.

Arnold, Constable & Co., the above importers, hereby appeal from the decision of this court, entered May 13, 1891, in the above-entitled action or proceeding reversing the decision of the board of U. S. general appraisers, to the Supreme Court of the United States, and pray that this appeal may be allowed and that a transcript of the record and proceedings and papers upon which said decision was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated New York, June 4, 1891.

W. B COUGHTRY.

Endorsement: U. S. circuit court, southern district of New York. In the matter of the collector of customs concerning importations by Arnold, Constable & Co., per Alaska, Oct. 13, 1890. Notice of appeal. W. B. Coughtry, att'y for importer-, 33 Pine street, N. Y. Dated New York, June, 1891. Edw. Mitchell, U. S. att'y and attorney for collector. U. S. circuit court. Filed June 4, 1891. John A. Shields.

273 United States Circuit Court, Southern District of New York.

In the Matter of the Application of the Collector of Customs at New York for a Review of the Decision of the Board of U. S. General Appraisers as to the Rate, etc., of Duty on Certain Merchandise Imported by Arnold, Constable & Co., per Alaska, Oct. 13, 1890. Suit "A," No. 374.

To the circuit court of the United States for the southern district of New York:

The above importers, through W. B. Coughtry, their attorney, hereby apply for the allowance of an appeal to the U. S. Supreme

Court from the decision and judgment of the U. S. circuit court rendered herein on the 13th day of May, 1891.

Dated June 4, 1891.

W. B. COUGHTRY,
Attorney for Importers.

The foregoing application is granted and appeal allowed.

Dated New York, June 4, 1891.

E. HENRY LACOMBE,
U. S. Circuit Judge.

Endorsement: U. S. circuit court, southern district of New York. In the matter of the application of the collector of customs concerning an importation by Arnold, Constable & Co., per Alaska, Oct. 15, 1890. Application for and allowance of appeal. Dated New York, June 4, 1891. Ed'w. Mitchell, U. S. att'y & att'y for collector. U. S. circuit court. Filed June 4, 1891. John A. Shields, clerk.

274 Circuit Court of the United States for the Southern District of New York.

In the Matter of the Application of the Collector of Customs at New York for a Review of the Decision of the Board of U.S. General Appraisers as to the Rate, &c., of Duty on Certain Merchandise Imported by Arnold, Constable & Co., per Alaska, Oct. 13, 1890. 374*a*.

It appearing that an error was made in the title of the above proceedings in a notice of appeal, petition, and order filed in the office of the clerk of said court by the importers on June 4th, inst.—

It is hereby consented that the title therein be amended on the record to conform to the proper title as shown by the appraisers' return.

Dated June 10th, 1891.

EDWARD MITCHELL,
U. S. Attorney.
W. R. COUGHTEY,
Att'y for Imp.

Ordered accordingly.

Dated June 10th, 1891.

E. HENRY LACOMBE,
Circuit Judge.

(Endorsed:) U. S. circuit court. In the matter of the ap-
275 plication of the collector of customs concerning a certain importation by Arnold, Constable & Co. Order. U. S. circuit court. Filed June 10, 1891. John A. Shields, clerk.

276 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

In the Matter of the Application of the Collector of Customs of the Port of New York Concerning an Importation of Merchandise by Arnold, Constable & Co., per str. "Alaska," Oct. 15, 1890.

Bond for Damages and Costs.

Know all men by these presents that we, Henry W. Stroud and Charles A. Brown, of the city and county of New York, are held and firmly bound unto the United States of America in the sum of two hundred and fifty dollars to be paid to the said United States; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the — day of June, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas the above-named Arnold, Constable & Co. have prosecuted an appeal to the Supreme Court of the United States to reverse the decision rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such
277 that if the above-named Arnold Constable & Co. shall prosecute their said appeal to effect and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY W. STROUD. [L. S.]
CHAS. A. BROWN. [L. S.]

Sealed and delivered, taken and acknowledged this tenth day of June, 1891, before me—

[L. S.]

JNO. N. WRIGHT,
Notary Public, N. Y. County.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

Henry W. Stroud, being duly sworn, deposes and says that he is worth the sum of five hundred dollars ($500) over and above all his just debts and liabilities.

HENRY W. STROUD.

Sworn to this tenth day of June, A. D. 1891, before me—

[L. S.]

JNO. N. WRIGHT,
Notary Public, N. Y. Co.

278 [Endorsed:] U. S. circuit court, southern district of New York. In the matter of the application of the collector of

customs of the port of New York concerning an importation of merchandise by Arnold, Constable & Co., per str. "Alaska," Oct. 15, 1891. Bond for damages and costs on appeal. Approved as to form and sufficiency. June 10th, 1891. (S'd) E. Henry Lacombe. U. S. circuit court. Filed Jun- 10, 1891. John A. Shields, clerk.

279 UNITED STATES OF AMERICA, *ss:*

To Joel B. Erhardt, collector of the port of New York:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the tenth day of July, 1891, pursuant to an appeal on the part of the importers filed in the clerk's office of the circuit court of the United States for the southern district of New York, to show cause, if any there be, why the decision of the U. S. circuit court in the said appeal mentioned should not be reversed, modified, or corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at the city of New York, in the southern district of New York, on the 10th day of June, 1891.

E. HENRY LACOMBE,
U. S. Circuit Judge.

Endorsement: U. S. circuit court, southern district of New York. In the matter of the application of the collector of customs concerning an importation of merchandise by Arnold, Constable & Co., per Alaska, Oct. 15, 1890. Citation. To Edward Mitchell, Esq., United States attorney: Sir: Please take notice that a citation, of which the within is a copy, has been this day duly entered in the office of the clerk of ——. Dated N. Y., June —, 1891. W. B. Coughtry, att'y for importers. U. S. circuit court. Filed June 10, 1891. John A. Shields, clerk.

280 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 279, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the matter of the application of the collector of customs at New York for a review of the decision of the board of U. S. general appraisers as to the rate, etc., of duty on certain merchandise imported by Arnold, Constable & Co., per "Alaska," Oct. 13, 1890, No. A 374, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to

Seal of U. S. Circuit Court, South. Dist. New York.

be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this ninth day of July, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the said United States the one hundred and sixteenth.

JOHN A SHIELDS, *Clerk.*

Endorsed on cover: Case No. 14734. S. New York, C. C. U. S. No. 825. Arnold, Constable & Co., appellants, *vs.* The United States. Filed July 11, 1891.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1892.

TERM No. 826.

HICKS ARNOLD, JAMES M. CONSTABLE and FREDERICK A. CONSTABLE, constituting firm of Arnold, Constable & Co.,
Appellants

vs.

THE UNITED STATES,
Appellee.

BRIEF FOR APPELLANTS.

STEPHEN G. CLARKE,
WM. B. COUGHTRY,
Counsel for Appellants

C. G. Burgoyne, Walker and Centre Streets, N. Y.

U. S. Supreme Court.

HICKS ARNOLD, JAMES M. CONSTABLE and FREDERICK A. CONSTABLE, constituting firm of Arnold, Constable & Co.,

vs.

THE UNITED STATES.

No. 825.
October Term, 1892.

BRIEF ON BEHALF OF APPELLANTS.

Statement.

This is an appeal from the decision of the Circuit Court in the Second Circuit, reversing the Board of General Appraisers as to the rate of duty applicable to certain knit goods imported by the appellants.

The goods in question consist of certain knit hosiery, viz., socks, undershirts and drawers, made on knitting frames and of wool.

Appraiser's Return, Record, p. 17.
Witness Brown, *Ib.*, 9.
Samples returned, see List, *Ib.*, 45.
Witness Brooks, *Ib.*, pp. 82, 83.

The Collector assessed duty upon them under Section 396 of the Act of October 1, 1890, as "wearing apparel" made of wool.

Record, p. 17.

The appellants protested, claiming the articles to be dutiable under Section 392 of the same act as knit fabrics made on frames, &c.

Record, pp. 7 and 17.

The statutes to be construed are as follows:

"396. On clothing, ready made, and articles of wearing apparel of every description made up or manufactured, wholly or in part, not specially provided for in this act, felts not woven and not specially provided for in this act, plushes and other pile fabrics, all of the foregoing, composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca or other animals, the duty per pound shall be four and one-half times the duty imposed by this act on a pound of unwashed wool of the first class, and, in addition thereto, sixty per centum *ad valorem*."

"392. On woolen or worsted cloths, shawls, knit fabrics, and all fabrics made on knitting machines or frames, and all manufactures of every description made wholly or in part of wool, worsted, the hair of the camel, goat, alpaca or other animals, not specially provided for in this act, valued at not more than thirty cents per pound, the duty per pound shall be three times the duty imposed by this act on a pound of unwashed wool of the first class, and, in addition thereto, forty per centum *ad valorem;* valued at more than thirty and not more than forty cents per pound, the duty per pound shall be three and one-half times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto forty per centum *ad valorem;* valued at above forty cents per pound, the duty per pound shall be four times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto fifty per centum *ad valorem*."

On the protest the Board of General Appraisers held:

"We accordingly hold that the merchandise in question should have been classified, as contended by the importers, under paragraph 392, and not paragraph 396 of the present tariff law.

"The decision of the Collector is reversed, and he will proceed to reliquidate the entry in the manner and time prescribed by law."

Thereupon the Collector petitioned the U. S. Circuit Court to reverse the decision of said appraisers.

Record, pp. 1 and 2.

Additional testimony was taken under the statute, and, on hearing, the Court reversed the finding of the appraisers, and held:

"That the decision of the Board of General Appraisers reversing the Collector, and holding that said merchandise was dutiable at 44c. per pound and 50% *ad valorem*, under paragraph 392 of the Act of October 1, 1890, as "knit fabrics and all fabrics made on knitting machines or frames," was erroneous, and the same is hereby reversed and set aside; and it is further ordered, adjudged and decreed that the said merchandise should have been classified and assessed for duty, as classified and assessed by the said Collector, at the rate of 49½ cents per pound and 60% *ad valorem* as 'articles of wearing apparel * * * made up or manufactured wholly, * * * not specially provided for in this act, * * * composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals,' pursuant to paragraph 396 of the Act of October 1, 1890, and not otherwise."

Thereafter said Court allowed an appeal to this Court.

Record, pp. 156, 157.

The only specific finding of fact by the appraisers, in addition to the one before cited, is:

"That the percentage of knit fabrics which come from abroad, outside of hosiery—such as stockings, socks, gloves, shirts and drawers, and other wearing apparel—is comparatively insignificant."

The Circuit Court made no different findings of fact, or, indeed, any findings whatever.

See Decree, pp. 156 and 157 of the Record.

A great amount of testimony, largely immaterial, was taken, and is embodied in the Record, pages 9–17 and 23–153.

The Board of Appraisers, on March 12th, made a further return of the facts in the case, and the same was filed in the Clerk's Office March 13th.

Record, p. 20.

This return was ordered to be eliminated from the record.

Id., p. 156.

These findings of fact are as follows, and, whether in or out of the record, we adopt them as a correct statement of the facts, and abundantly supported by the evidence—not only by that before the appraisers but also by the subsequent evidence taken in court.

These facts are:

"FIRST. That the merchandise embraced in the protestant's invoice, and made the subject of their protest, are stockings, socks, undershirts and drawers composed wholly or in part of wool or worsted.

"SECOND. That said goods were made upon knitting machines or frames.

"THIRD. That said stockings, socks, undershirts, and drawers are 'knit fabrics.'

"FOURTH. That the phrase 'knit fabrics,' as used in paragraph 392, Schedule K, Act of October first, 1890, is one of commercial designation, and was such at the

time of the passage of said act, and was then, and is now, understood in trade and commerce to include all articles which were knit either by hand or on knitting machines or frames, whether completed or in the piece.

"FIFTH. That the phrase 'knit fabrics' is also one of common knowledge, and is popularly known to be the kind of goods covered by the invoice and protest in this case."

Record, pp. 20, 21.

Errors Assigned.

1st. The Court erred in reversing the decision of the Board of General Appraisers that the merchandise in question was dutiable at forty-four cents per pound and fifty per centum *ad valorem* as knit fabrics made on knitting machines or frames.

2d. The Court erred in ordering, adjudging and decreeing that the said merchandise should have been classified and assessed for duty, as classified and assessed by the said Collector, at the rate of 49½ cents per pound and sixty per centum *ad valorem*, as "articles of wearing apparel * * * made up or manufactured wholly, * * * not specially provided for in this act, * * * composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca or other animals," pursuant to paragraph 396 of the Act of October 1, 1890, and not otherwise.

POINTS.

The question presented is whether socks, undershirts and drawers of wool made on knitting machines or frames come within the provision for "*all* fabrics made on knitting machines or frames," or whether they are provided for under the enumeration of "clothing ready made and articles of wearing apparel of every description made up or manufactured wholly or in part."

Either enumeration in the absence of the other might cover these goods. Which enumeration in fact was intended to cover them must be determined in a large degree, by a consideration of prior legislation, and from the fact shown in the evidence that, if the provision for knit fabrics is not applicable to the goods in question, it can only be applied to a very limited class of goods, which were already sufficiently enumerated at the same rate of duty.

The Revised Statutes in Schedule L, p. 471, provided for knit goods and also for ready-made clothing and wearing apparel of every description, except knit goods (p. 472), and also (p. 474) for caps, gloves, leggins, mitts, socks, stockings, wove shirts and drawers, and all similar articles made on frames.

The Act of 1883 (22 Stats. at Large, 509 Schedule K,) provided, paragraph 363, for knit goods and all goods made on knitting frames, without special enumeration of the various articles, as was done in the Revised Statutes, and also provided for ready-made clothing and wearing apparel, except knit goods.

The enumeration by method of manufacture, viz.: knit goods and manufactures made on frames, is not

new to the Statutes, being found in the Act of October 30, 1842, 5 Stats. at Large, p. 549; Act of July 26, 1846, 9 Stats. at Large, p. 44; Act of March 2, 1861, 12 Stats. at Large, p. 178; Act of July 14, 1862, *Id.* p. 543, and in all of these statutes provisions for a different rate of duty upon ready-made clothing and wearing apparel also appears.

The Court below based its decision (46 Fed. Rep., p. 512) upon the dropping of the exception from the statute and the substitution of the term "fabrics" for the term "goods" in the prior act; that the question was then remitted to a determination of the applicable rate of duty, by ascertaining whether the enumeration of the use to which the articles should be applied or the method of manufacture was the more specific.

I.

We submit that, by the use of the term "fabric" instead of the term "goods," Congress did not intend to change the former classification.

Referring to the opinion of the Court in Arthur vs. Vietor, 127 U. S., 575, decided shortly prior to the enactment of the present law, I quote:

"At the trial, after the plaintiffs had rested, the defendant (*i. e.*, the Collector) offered evidence tending to show that knit goods are textile fabrics composed of a single thread united in a series of loops, corresponding to the old-fashioned hand-knitting process, and that the plaintiffs' importations were so made; and, further, that all fabrics made on frames are knit goods. The defendant then rested. The plaintiffs then offered evidence tending to show that the term "knit goods" used in trade and commerce has no different or other meaning than its meaning among men in

general; that there are knit goods known to trade and commerce which were not made on frames, but which were made by hand, and that there are other goods, as caps, leggins, mitts, socks, stockings and drawers, made in whole or in part of worsted, worn by men, women and children, which are made on a frame and knit, and which are also knit by hand; that, while the result of knitting by hand, and of the manufacture on a frame of a fabric consisting of a single thread, is the production of a textile fabric composed of a series of connecting loops which are alike in each case, yet the processes by which they are produced are dissimilar; that the result of the process of manufacturing upon frames and knitting by hand is the same, although the two processes are dissimilar; also, that there are no textile fabrics made on frames which are known in trade and commerce, except fabrics composed of cotton, wool or worsted, silk, linen, or a mixture of these materials."

In view of this phraseology, derived from the language of the manufacturers, as will be seen by reference to the original record, in the case above cited, it is not difficult to understand how the term "fabric" came to be substituted in the Act of 1890 for the term "goods" in the similar connection in prior acts.

The Court below, in its oral opinion before referred to, intimated that there was a large group of articles which might be called "knit fabrics," and which were not also "wearing apparel."

Such assumption is not supported by the evidence, and the Court makes no finding of fact on that point; on the contrary, the appraisers distinctly find that the percentage of knit fabrics which come from abroad, outside of stockings, socks, gloves, shirts and drawers, is comparatively insignificant (Record, p. 20.) The evidence also shows, without dispute, that this insignificant fraction are also known as cloths, and would be provided for, under the first designation in paragraph 392, as woolen and worsted cloths. So that, if the conclu-

sion of the Court below, that the provision for knit fabrics is limited to such fabrics as are not wearing apparel, it is surplusage under a double enumeration of the same article at the same rate of duty.

Upon this point we have extracted the principal evidence as given in the record, and printed in Appendix B at the end of this brief.

II.

The Court below erred in holding that the use to which an article was to be applied was a more specific enumeration than an enumeration by method of manufacture and in applying such conclusion as a rule of decision in this particular case.

Clothing and wearing apparel are made of many different materials and varieties of fabrics.

Revenue Statutes are to be construed together, and effect, if possible, is to be given to every part.

Said Mr. Justice BRADLEY in delivering the opinion of this Court in Solomon vs. Arthur, 102 U. S., 212:

"It is observable that the description of 'manufactures made of mixed materials, in part of cotton, silk,' &c., is more general than that of 'manufactures of which silk is the component part of chief value.' Logically, the two phrases standing together in the act or system of laws would be related as follows: 'Goods made of mixed materials, cotton, silk, &c., shall pay a duty of thirty-five per cent.; *but, if* silk is the component part of chief value, they shall pay a duty of fifty per cent.'"

Applying this to the present case must not we say, in view of the facts that the description "clothing

ready made and articles of wearing apparel of every description" is more general than that of "all fabrics made on knitting machines or frames." Must we not also continue, "Logically the two phrases standing together in the same act or system of laws would be related as follows:"

"Clothing ready made and articles of wearing apparel, 49½ cents per pound and sixty per centum *ad valorem*, *but if* knit goods or fabrics made on knitting machines or frames, 44 cents per pound and fifty per centum *ad valorem*."

In the case before cited such rule of construction was applied to the increase of the duty. I submit that the same rule should be applied, although it makes a lower rate applicable.

It may be observed that in nearly all the statutes prior to the present, knit fabrics of wool or worsted have borne a lower rate of duty than woven fabrics or wearing apparel of this material, but in all have been discriminated. The construction we contend for continues this difference in the present statute.

This method of harmonizing questions of conflicting or double enumeration was again applied in this court in a very recent case. Says Mr. Justice BREWER:

"In Schedule 'K' it is 'made wholly or in part of wool,' thereby reaching to all manufactured articles of which any portion is wool; while in Schedule 'L' it is narrower and more limited—'made of silk, or of which silk is the component material of chief value.' This is a special enumeration, rather than the other. This idea was presented in *Solomon vs. Arthur*, 102 U. S., 208, 212, in which the descriptions compared were these: 'Manufactures composed of mixed materials, in part of cotton, silk,' etc., and 'manufactures of which silk is the component part of chief value.' Both expressions were held to be merely descriptive, and the true interpretation to be given to them was thus clearly stated by Mr. Justice BRADLEY in the opinion of the

Court: 'It is observable that the description of 'manufactures made of mixed materials, in part of cotton, silk,' etc., is more general than that of 'manufactures of which silk is the component part of chief value.' Logically, the two phrases standing together in the same act or system of laws, would be related as follows: 'Goods made of mixed materials, cotton, silk, etc., shall pay a duty of thirty-five per cent; *but, if* silk is the component part of chief value, they shall pay a duty of fifty per cent.' Applying the same rule of construction here, the circuit Judge, in deciding this case, and holding that the goods were dutiable under Schedule 'L' (*Meyer vs. Hartranft*, 28 Fed. Rep., 358), well said that the statute was in substance to be read thus: 'All manufactures of wool of every description, not especially enumerated or provided for in this act, shall be subject to a duty of thirty-five cents per pound and thirty-five per centum *ad valorem;* but, if the silk is the component material of chief value, they shall be subject to a duty of fifty per cent. *ad valorem.*' We think this construction harmonizes the two sections better than any other and gives force to the intent of Congress."

Hartranft vs. Meyer, 135 U. S., 238, 239.

III.

The construction contended for by the Collector is at the best doubtful and ambiguous. It is based upon a claim that "fabric" only means material, and that of two pertinent descriptions, one should be ignored in order that a higher rate of duty may be exacted of the citizens.

It is a well-settled rule of construction of revenue statutes that where there is a doubt or ambiguity the decision should be in favor of the importer, for neither

duties nor taxes are ever imposed upon a citizen upon a vague or doubtful interpretation.

Endlich, Interpretation of Statutes, Sect. 346.
Elmes, Laws of Customs, Sect. 60.
Hartranft vs. Wiegmann, 121 U. S., 609.
United States vs. Wigglesworth, 2 Story, 369.
Powers vs. Barney, 5 Blatchf., 202.
Hedden vs. Iselin, 31 F. R., 269, top.

The finding of the appraisers that the goods in question are dutiable at 44 cents per pound and fifty per centum *ad valorem* should be affirmed.

STEPHEN G. CLARKE,
WM. B. COUGHTRY,
Of Counsel for Appellants.

APPENDIX A.

Statutes.

Act July 4, 1789:

* * * on clothing ready made, seven and one-half per centum *ad valorem*.

1 Stat. at L., 26; Chap. 2; Sec. 1.

Act Aug. 5, 1790:

* * * clothing ready made, * * *

1 Stat. at L., 181; Chap. 39; Sec. 1.

Act May 2, 1792:

* * * gloves and mittens; stockings, * * *

1 Stat. at L., 260; Chap. 27; Sec. 1.

Act June 7, 1794:

On gloves, mittens, stockings, fans, buttons and buckles of every kind, 5 per cent. *ad valorem*.

1 Stat. at L., 391; Chap. 54; Sec. 1.

Act April 27, 1816:

Third. * * * stockings, of wool or cotton, * * *

3 Stat. at L., 310; Chap. 107.

Fifth. * * * and clothing ready made.

Id., 311.

Act May 19, 1828:

SECOND. * * * on manufactures of wool, or of which wool shall be a component part, *except* carpeting, blankets, worsted stuffs, goods, bombazine, hosiery, mitts, gloves, caps and bindings. * * *

4 Stat. at L., 271, Chap. 55, Sec. 2.

SEVENTH. * * * on woolen blankets, hosiery, mitts, gloves and bindings, thirty-five per centum *ad*

valorem; on clothing ready-made, fifty per centum *ad valorem*.

Id., 272.

Act July 14, 1832:

SECOND * * * On mitts, gloves, bindings, blankets, hosiery and carpets and carpeting, twenty-five per centum *ad valorem*, * * * and upon merino shawls made of wool, all other manufactures of wool, or of which wool is a component part, and on ready-made clothing, fifty per centum *ad valorem*.

4 Stat. at L., 584; Chap. 227; Sec. 2.

Act August 30, 1842:

SECOND. * * * on all manufactures of wool, or of which wool shall be a component part, except carpeting, flannels, backing, and baizes, blankets, worsted stuff goods, ready-made clothing, hosiery, mitts, gloves, caps and bindings, a duty of forty per centum *ad valorem*.

SEVENTH. * * * on woolen and worsted mitts, gloves, caps and bindings, and on woolen or worsted hosiery—that is to say, stockings, socks, drawers, shirts, and all other similar manufactures made on frames—a duty of thirty per centum *ad valorem*.

NINTH. * * * on ready-made clothing, of whatever materials composed, worn by men, women or children, except gloves, mitts, stockings, socks, wove shirts and drawers, and all other similar manufactures made on frames; hats, bonnets, shoes, boots and bootees, imported in a state ready to be used as clothing by men, women or children, made up either by the tailor, manufacturer or seamstress, an *ad valorem* duty of 50 per centum; on all articles worn by men, women, or children, other than as above specified or excepted, of whatever materials composed, made up wholly or in part by hand, a duty of forty per centum *ad valorem*.

5 Stat. at L., 549, Chap. 270, Sec. 1.

Act July 26, 1846:

* * * caps, gloves, leggings, mitts, socks, stockings, wove shirts and drawers, and all similar articles made on frames, worn by men, women or children, and not otherwise provided for; clothing ready-made, and wearing apparel of every description of whatever material composed, made up or manufactured, wholly or in part, by the tailor, seamstress or manufacturer.

9 Stat. at L., 44, Chap. 74, Sec. 11, Sched. "C."

Act March 2, 1861:

SECTION 13. SECOND. * * * on clothing ready-made, and wearing apparel of every description, composed wholly or in part of wool, made up or manufactured, wholly or in part, by the tailor, seamstress or manufacturer.

12 Stat. at L., 178, Chap. 68.

SECTION 22. Articles worn by men, women or children, of whatever material composed, made up, or made wholly or in part by hand, not otherwise provided for.

Id., 191.

Caps, leggins, mitts, socks, stockings, wove shirts and drawers, and all similar articles made on frames, of whatever materials composed, worn by men, women or children, and not otherwise provided for.

Id.

Clothing ready made, and wearing apparel of every description, of whatever materials composed, except wool, made up or manufactured wholly or in part by the tailor, seamstress or manufacturer.

Id.

Act August 5, 1861 :

Amends Section 13 of preceding act (see above) by adding after the word " manufacturer " the words " except hosiery."

12 Stat. at L., 294 ; Chap. 45 ; Sec. 6.

Act July 14, 1862, Chap. 163 :

Sec. 9. *And be it further enacted*, that, in addition to the duties heretofore imposed by law on the articles hereinafter mentioned and included in this section, there shall be levied, &c.:

On woolen cloths, woolen shawls, and all manufactures of wool, of every description, made wholly or in part of wool, not otherwise provided for, a duty of six cents per pound, and, in addition thereto, five per centum *ad valorem*.

On clothing ready made, and wearing apparel of every description, composed wholly or in part of wool, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, six cents per pound, and, in addition thereto, five per centum *ad valorem ; provided*, that Balmoral skirts, or goods of like description, or used for like purposes, made wholly or in part of wool, shall be subjected to the same duties that are levied upon ready-made clothing.

12 Stats. at Large, pp. 552 and 553.

SEC. 13. *And be it further enacted*, that from and after the day and year aforesaid, in addition to the duties heretofore imposed by law on the articles hereinafter mentioned, there shall be levied, collected, and paid, on the goods, wares and merchandise, enumerated and provided for in this section, imported from foreign countries, a duty of five per centum *ad valorem*, that is to say :

Caps, gloves, leggins, mitts, socks, stockings, wove shirts and drawers, and all similar articles made on

frames, of whatever material composed, worn by men, women and children, and not otherwise provided for.

12 Stats. at Large, p. 556.

Act June 30, 1864:

SECTION 5. * * * On clothing ready made, and wearing apparel of every description, composed wholly or in part of wool, made up, or manufactured wholly or in part by the tailor, seamstress or manufacturer.

13 Stat. at L., 207, Chap. 171.

On shirts, drawers and hosiery of wool, or of which wool shall be a component material, not otherwise provided for.

Ib., 208.

Act March 2, 1867:

* * * Knit goods. * * *

On clothing ready made, and wearing apparel of every description, and balmoral skirts and skirting, and goods of similar description, or used for like purposes, composed wholly or in part of wool, worsted, the hair of the alpaca, goat or other like animals, made up, or manufactured wholly or in part by the tailor, seamstress or manufacturer, except knit goods.

* * * * * *

Clothing ready made and wearing apparel of every description, and balmoral skirts and skirting, and goods of similar description, or used for like purposes, composed wholly or in part of wool, worsted, the hair of the alpaca, goat or other like animals, made up or manufactured wholly or in part by the tailor, seamstress or manufacturer, except knit goods, fifty cents per pound, and, in addition thereto, forty per centum *ad valorem*.

14 Stat. at L., 561; Chap. 197; Sec. 2.

Revised Statutes of 1874, Sec. 2504, Schedule L, p. 475:

* * * knit goods * * * (*Id.*, p. 478, same as last act, Schedule M.) Clothing ready made and wearing apparel of every description of whatever material composed, except wool, silk and linen, made up or manufactured wholly or in part by the tailor, seamstress or manufacturer, not otherwise provided for; caps, gloves, leggins, mitts, socks, stockings, wove shirts and drawers, and all similar articles made on frames, of whatever materials composed, except silk and linen, worn by men, women or children, and not otherwise provided for; articles worn by men, women and children, of whatever material composed, except silk and linen, made up or made wholly or in part by hand, not otherwise provided for, thirty-five per centum *ad valorem*.

Id., p. *478*.

Act of August 7, 1882, added the word "wool" before "silk."

18 Stat. at L., Chap. 391.

Act of March 3, 1883:

* * * knit goods * * * clothing ready made and wearing apparel of every description, not specifically enumerated or provided for in this act, and balmoral skirts and skirting, and goods of similar description or used for like purposes, composed wholly or in part of wool, worsted, the hair of the alpaca, goat or other animals, made up or manufactured wholly or in part by the tailor, seamstress or manufacturer, except knit goods, forty cents per pound, and in addition thereto 35 per centum *ad val.*

22 Stat. at L., 509; Chap. 121; Sched. K.

Act of October 1, 1890:

"392. On woolen or worsted cloths, shawls, knit

fabrics and all fabrics made on knitting machines or frames." * * *

26 Stat. at L., 596; Chap. 1244; Sec. 2; Sched. K.

"396. On clothing, ready-made, and articles of wearing apparel of every description, made up or manufactured wholly or in part, not specially provided for in this act, felts not woven, and not specially provided for in this act, and plushes and other pile fabrics, all the foregoing composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca or other animals.

Id., 597.

APPENDIX B.

Testimony of Witnesses for the Government as to Samples Being Cloth.

Sample H.—Stockinet Cloth—nine samples :

"Q. Bought and sold by the yard, in the piece?

"A. Yes, sir; and corresponds to what I would call a light-weight Jersey cloth. Jersey cloth covers a great range, light and very heavy (p. 37).

"Q. Kindly tell us about Jersey cloth?

"A. We do not manufacture that class of goods in our factory. It is the manufacture of other parties, but is made and finished in the piece much after the manner of broadcloth. It is imported here, and it is made here, both" (p. 33).

"A. * * * Some years ago I started a mill called a stockinet mill, and they used to sell cloth, as they termed it then—this stockinet cloth—to the people about the country for manufacturing into garments. That was quite a trade. Not only that, but storekeepers came and bought this cloth—this fabric—to make into garments.

"Q. Bought and sold by the yard or piece?

"A. Sold by the yard.

"Q. Are such goods illustrated by Sample H?

"A. Yes, sir; that class of goods" (p. 78).

Sample K.—Five small pieces colored cloth :

"Q. Is this a knitted cloth or fabric?

"A. It is, sir" (p. 40).

"* * * A. The salesman supposed they were woven goods. * * * He said they were West of England cloth.

"2. * * * For example, the articles represented in Exhibit K, for what purpose can they be used?

"A. You mean cloth like that?

"Q. Yes; cloth represented by those samples?

"A. For a great variety of clothing" (p. 44).

"Q. I forgot to show you Exhibit K. Will you look at the five samples marked 'Exhibit K' and state what they are?

"A. I should say they were samples of knitted cloth.

"Q. Usually sold by the yard or piece?

"A. Yes, sir" (p. 70).

"Q. What is the name of that which has been called here by some, woolen cloth (indicating)?

"A. Such goods as this is Jersey cloth.

"* * * Q. Is that cloth the only cloth that would be known as woolen cloth?

"A. That is the only thing I know of" (p. 75).

"Q. Look at Ex. K and state, if you know, what those samples represent?

"A. Those are samples of a kind of Jersey cloth of knit fabrics" (p. 79).

"Q. I show you Ex. K, five samples in an envelope. * * * What are they?

"A. I should call three of the samples Jersey cloth, but there are two fancy weaves here. *This* is what they call a plain Jersey cloth. * * * A. I should call it a Jersey cloth or knitted fabrics, or something of that sort. It is known as piece goods, really" (p. 114).

"Q. * * * Now look at the five samples marked 'Ex. K,' and state what they are?

"A. I should call four of those stockinet cloths, and I should think *that* was, although my judgment is not clear in regard to this piece" (p. 122).

Sample L.—One sample colored cloth:

"Q. As to Ex. L, for what purpose can such cloth as that be used?

"A. They are intended for coatings" (p. 44).

"A. That is a Jersey cloth, manufactured a little different" (p. 86).

"A. * * * This is what they call a stockinet cloth" (p. 113).

"Q. This sample L you would call cloth, would you not?

"A. I should call that stockinet cloth.

"Q. The same thing?

"A. Yes, sir; a little different species" (p. 125).

Sample M.—Stockinet (from Am. Hos'y Co. factory):

"Q. Will you name what kind of knit cloths, bought and sold by the yard or piece, you have been familiar with?

"A. Stockinet cloth, something like Ex. M, in white and in colors, known in the market as stockinet" (p. 86).

Sample Q:

"A. This article is knit upon the spring circular machine, and after the knitting process it goes through the fulling or felting process, as ordinary woolen cloths, and is then opened at the sides" (p. 45).

"Q. Does it closely resemble a woven fabric?

"A. Very closely; most people would suppose it was a woven fabric with warp and woof; in fact, the clerk at the store supposed it was made in that way.

"Q. Do you know under what trade name goods of this character were bought and sold prior to 1881 in the markets of this country?

"A. Generally regarded as clothes, I think; in the cloth department, knit cloth" (p. 46).

"Q. Look at sample Q. Please tell me if that is cloth?

"A. It is a knit cloth; yes.

"Q. It is a cloth?

"A. It is a cloth; likewise it is a fabric" (p. 80).

"A. That is a Jersey cloth, yes" (p. 86).

"Q. I show you Exhibits L and Q; are you familiar with goods of that character?

"A. Yes, sir.

"Q. What are they?

"A. That is what we call Jersey cloth" (referring to Exhibit Q) (p. 113).

"Q. There are two other samples here. Q & L?

"A. These are stockinet cloths" (p. 122).

"Q. Now take one of those larger pieces; take Q; you would call that cloth, wouldn't you?

"A. I termed that in my direct examination stockinet cloth.

"Q. So it is cloth?

"A. It is a species of cloth.

"Q. It is cloth of a species known as stockinet cloth?

"A. Yes, sir" (p. 125).

Sample R:

"Q. Have you any other samples with you of knit cloth that is bought and dealt in by the yard—piece goods?

"* * * A. That kind (producing three samples).

"Q. Are these three samples produced by you all knit cloths?

"A. Yes, they are all knit.

"Q. * * * Ex. R, the black one. That is in the form of cloth, is it?

A. Yes, sir; it comes in cloth" (p. 86).

Sample S—Stockinet.

(Witness described making of "cut" underwear from sample Q.) "Q. In other words, the cloth or fabric is already made and cut according to the pattern?

"A. Yes, sir; * * *" (p. 90).

(In answer to the question, as to whether it is a cloth, witness dodges a direct answer for some time, calls it stockinet, but finally says it is not a cloth (pp. 91, 92).

Sample T.—Outing shirt. "Cut goods" for outside wear:

"A. We make outside shirts, *outing* shirts and overshirts, and goods of that character, that are worn outside the underwear, from knit fabrics" (p. 54).

Sample V.—Five samples cloth:

"A. These are different fabrics (examining Exhibit V). I have here two meltons. * * * *That* is a species of astrachan; imitation of an astrachan. *That* is a fabric that has only been made recently; I hardly know what classification to put on that. *That* is a species of stockinet cloth. *That* is a stockinet cloth.

"Q. As to the red one?

"A. That comes under the same head, but a different class of the same fabric. * * * A. The stockinet cloths are knitted, and the meltons are woven (p. 121).

"Q. * * * I notice you use the word 'cloth' and the word 'cloths' quite frequently; indeed I suppose these articles are known as cloths, are they not?

"A. Not by that simple term—not by that term itself; stockinet cloths would be a proper term for them.

"Q. That would be a description of the particular texture of the article?

"A. Yes, sir.

"Q. The same as astrachan?

"A. Astrachan cloth.

"* * * Q. You would want to use the word 'woolen' or the word 'cotton' or some other such description, or stockinet, if it is knit stockinet, indicating a particular form of the woolen article?

"A. Yes, sir. * * * I would specify whatever I was handling, so that if I were writing to you, you would know what I meant if you were in the trade (pp. 124, 125).

"A. Yes, sir, I have seen a great variety of goods similar to those in Exhibit H.

"Q. Are they woven or knit?

"A. These are all knit.

"Q. Were they bought and sold by the yard and in the piece in the commerce of this country prior to October 1, 1890?

"A. Yes, sir; very generally, before then and at the present time. I have some samples of similar character. For quite a number of years it has been a growing business in cloths that are manufactured on knitting machines, a regular loop fabric. They have in a great many instances taken the place of other woolen cloth for the manufacturing of clothing not only for underwear, but for outside garments—for gentlemen's coats and suits, and particularly for ladies' coatings. Our concern have frequently had their attention called to this department of the trade, and have had samples sent to us from builders of the machines in foreign countries, and also in this country; and a great many of the goods produced on these machines, when seen in the stores, would be taken for a woven fabric by one not familiar with their production. In fact, in visiting a store this morning, I found the salesman behind the counter was sure they were woven goods until I called his attention to the fact that they had no selvage by raveling out some of them. He could hardly admit that they were not woven. I have a sample of those goods made for gentlemen's coatings" (p. 39).

"Q. You have spoken here of what you call cloth; what do you mean by cloth?

"A. I should say that cloth was any kind of a textile production or manufacture that may be woven—may be knitted and adapted to a great variety of uses.

"Q. Do you limit it to length or width or form of production?

"A. No, sir; I would not limit it in that respect arbitrarily, but still technically a cloth is a product

that has been woven or knit and not as yet adapted to the uses for which it was made. The sleeve of my coat is really a cloth, but I should hardly think a pile of that lying in a tailor's shop would be spoken of as a cloth.

"Q. Do you mean to say that the sleeve of your coat, just as it exists there before us, is cloth?

"A. It is of cloth—it is cloth.

"Q. Of cloth?

"A. It is cloth—of cloth.

"Q. That is not the point.

"A. Not in the commercial and ordinary use.

"Q. We want the commercial and ordinary use. We want your definition of cloth—of knit cloth.

"A. I should say that knit cloth, as understood in the trade and as ordinarily used, would be like the exhibits or similar to them.

"Q. That is not sufficient. I don't want to complicate your answer by twenty exhibits in this case. They are different, all of them, from each other. I think we ought to have from you, as an expert, a definition of what you mean by knit cloth?

"A. I beg your pardon. I do not mean to dodge your question at all. I understand a cloth to be a fabric which has been woven or wrought upon any machine, ordinarily, with a given width, and which in all commercial uses is put up in a roll or in a piece, and is sold by the yard.

"Q. You say ordinarily in a given width, but not always and necessarily a given width. Is it or is it not?

"A. It varies, of course, in width; not necessarily a given width.

"Q. Not necessarily in a given width?

"A. No" (p. 55).

"Q. Now, suppose a knit article, instead of being with a selvage or edge as a limitation, should be primarily cylindrical in shape and of the same diameter

right along, so you could flatten it down, and there would be an upper and lower part to it and yet no edge, it would be continuous, and suppose that should run in exact width right along for a number of yards and then be cut off—would you call that a cloth or not?

"A. I should call it a cloth; yes.

"Q. Then, your idea of knit cloth is that it must be within parallel lines; is that the idea?

"A. I gave a definition of cloth as I understand it; as it is used in the stores, and as an article of trade" (p. 56).

"Q. Now, these piece goods, to which you have referred, are known as cloth or cloths, are they not?

"A. They are known as cloths—piece goods.

"Q. Did you ever know any cloths that did not come in the form of piece goods?

"A. No; I cannot say that I did.

"Q. Have you ever had anything to do with imported cloths of that character?

"A. Yes, sir; I have.

"Q. Have you any idea what quantity of imported cloths of that character comes into the United States?

"A. To-day?

"Q. Yes.

"A. I don't think a very large proportion" (p. 115, 116).

SUPREME COURT OF THE

OCTOBER TERM,

No.

HICKS ARNOLD, SAM

ERICK A. CONSTANT

vs.

GOLD CONSTABLE & CO.,

THE UNITED STATES,

BRIEF FOR APPELLANTS IN

Attorneys

Wall Street

City

Gibbs & Dewitt Law Printing Co.

made clothing nor wearing apparel within the meaning of the statute.

A jersey jacket, which is a knit fabric, is also an article of apparel, and our contention as to the true construction of the statute brings such article in at the lower rate of duty. Such construction of the statute would necessarily place the goods in question in the same category.

I.

To sustain our appeal in the present case, however, this Court need not go so far. In no proper sense of the term are the appellants' importations wearing apparel.

This Court has held that the term wearing apparel is not a commercial term.

Maillard *vs.* Lawrence, 16 How., 120.

"Words used in these tariff statutes, when not technical, either as having a special sense by commercial usage or as having a scientific meaning different from the popular meaning—in other words, when they are words of common speech—are within the judicial knowledge and their interpretation is a matter of law."

Toplitz *vs.* Hedden, Sup. Ct., Oct. T., 1892, not yet reported.

See also Greenleaf *vs.* Goodhue, 101 U. S., 284.

The phrase "wearing apparel of every description" in the statute means no more than wearing apparel—*i. e.*, the article must be wearing apparel or it is not within the enumeration.

The dictionaries, to which we are to look for a statement as to the common use of words, limit apparel to the outer

garments and external array of individuals. We quote as follows:

Webster's Dictionary (ed. of 1875):

"Apparel—*external clothing*, vesture, garments, dress."

Webster's International Dictionary:

"Apparel—*external clothing*, vesture, garments, dress, garb, *external habilaments or array.*"

Worcester's Dictionary:

"Apparel—dress, clothes, clothing, attire, array, vesture, raiment, *external habilaments.*"

Imperial Dictionary:

"Apparel—clothing, vesture, garments, dress, *external array.*"

Century Dictionary:

"Apparel—*a person's outer clothing* or vesture, raiment, *external array.*"

We have called attention to this distinction as one recognized by Congress for many years. This is especially apparent in the act of 1846, where the same rate of duty is applied, but under different enumerations.

See Brief, page 15, for quotation.

In this connection the language of the Chief Justice is not inapplicable:

"Inasmuch as Congress, for the thirteen years prior to 1883, treated hairpins for revenue purposes as a distinct article from 'pins, solid head or other,' we consider it unreasonable to conclude that the legislation of 1883 was intended to do away with a distincton manifestly regarded as inherent in the thing itself."

Robertson *vs.* Rosenthal, 132 U. S., 460, 464.

I quote also from an opinion of Judge Sawyer:

"So also, in my opinion, shoes were not intended to be included in the term 'wearing apparel of every description.' By reading it with the context, 'wearing apparel * * * made up wholly or in part by the tailor, seamstress, or manufacturer,' it seems evident that Congress intended other manufacturers of the class similar to a 'tailor or seamstress'—something *ejusdem generis*. The principle *noscitur a sociis* appears to me to be applicable. A shoemaker is not in any respect similar to a tailor or seamstress. In ordinary popular use of language, no one, I presume, would for a moment think that shoes are included in the term wearing apparel. Chinese shoes for twenty years have been classified as manufactures of silk and cotton respectively. A definition adopted and acted upon for a long time should not be regarded as changed by a subsequent act of Congress unless the intention to change is clearly manifest." (Swayne *vs.* Hager, 37 Fed. Rep., 780, 782, '3, and cases there cited.)

Thus it would seem that Congress and the courts have recognized the distinction which the every-day use makes between wearing apparel and underclothing made on frames, or hosiery.

"Hosiery.—Stockings in general; goods knit or woven like hose."

Webster's International Dict.

It is true that in Arthur *vs.* Unkart, 96 U. S., 118, gloves made on frames were held to be dutiable under that denomination, but I submit that a specific enumeration of "caps, gloves, leggings, mitts, socks, stockings, wove shirts, and drawers and all similar articles made on frames" is not in any degree a more specific enumeration than that found in the act under consideration, "all fabrics made on knitting machines or frames."

Fabric.—1. The structure of anything; the manner in which the parts of a thing are united; workmanship; texture; make; as, cloth of a beautiful fabric.

2. That which is fabricated; as, (*a*) frame-work; structure; edifice; building.

Webster's International Dict.

Thus knit fabrics or fabrics made on frames are but the equivalents of the "articles" specified in the earlier acts.

The act of 1883 provided for flannels, blankets, hats of wool, *knit goods, and all goods made on frames* (22 Stats. at L., 509), omitting the long-used specification, "caps, gloves, leggins, mitts, socks, stockings, &c."

II.

The board of appraisers and the court below each based the conclusion arrived at, upon determination as to which of the two provisions is the more specific, the board finding one way, the court another.

Counsel for the Government in his brief sums up the argument:

"It would seem clear that a designation of articles *by the particular use to which they are put* is more specific than a general trade designation which covers as well articles applied to such use as a large number besides, *not so applied*, whether of that number the actual importations into this country are large or small, Congress having had in view the *potential* as well as the *actual*.

"At the outside, the former designation is quite as specific as the latter."

We take issue upon this. It is not a contrast between use and a general trade designation, but between a general class of a great variety of articles, well known by name as well

as use, and an enumeration by a particular method of manufacture.

Conceding that the term wearing apparel, were there no other enumeration, might include the goods in question, it also includes a great variety of goods which were not manufactured in the particular manner these goods were, and which particular method of manufacture is made by Congress a dutiable category. A category also found in the statute for fifty years.

Under the act of 1883 goods made on frames were dutiable at 35 cents a pound and 40 per cent. ad valorem, and wearing apparel at 40 cents a pound and 35 per cent. ad valorem.

Upon our contention these rates are advanced by the act of 1892 respectively nine cents a pound and 10 per cent. ad valorem and nine and a half cents a pound and 25 per cent. ad valorem.

It is now sought by judicial construction to add to the increase upon the frame goods four and one-half cents a pound and 15 per cent. ad valorem.

In other words, you are asked to hold that Congress intended to increase the rate of duty upon frame goods as much as 14½ cents a pound and 20 per cent. ad valorem, not by reason of an actual enactment to this effect, but by reason of the omission of an exception found in earlier statutes.

But the two provisions existed side by side in still earlier statutes without the exception.

We may well inquire if it is to be held that Congress legislates by omission, what is the effect of omitting in the act

of 1890 the words "by the tailor, seamstress, or manufacturer"? The whole phrase in the act of 1883 is "made up or manufactured wholly or in part *by the tailor, seamstress, or manufacturer, except knit goods,*" the words in italic being omitted in the act of 1890.

We submit that the simple omission of redundant words is not a proper foundation for this Court to declare the intent of Congress to impose onerous taxation.

May we not say with the Assistant Attorney General that if Congress in the act of 1890, in the provisions for silk wearing apparel, included silk goods out of superabundant caution, there being no provision for knit goods of silk, that the Congress of 1883, out of a similar caution, excluded knit goods from the wool-wearing apparel provision in the act of that year, there then being a provision for woolen knit goods?

III.

The construction contended for by us gives effect to both provisions.

The only goods made on frames, not worn on the person, are varieties of woolen cloths, and as such would be provided for without any enumeration for goods made on frames if Congress had intended all the other frame goods to be dutiable as wearing apparel; while our goods would not be covered by that enumeration.

This would cover also the "*potential*" as well as the "*actual*" importation suggested by the Assistant Attorney General.

We also submit that if the act of 1883 had not contained the phrase "except knit goods" that the necessary construction would have been the one we contend for.

If this is so, the omission in the act of 1890 of such superfluous words ought not to operate to change the construction of the two provisions under consideration.

Schedule K of the act of 1890 provides with great particularity for every sort of woolen fabric. Thus:

§ 392 provides for many varieties of woolen textile fabrics, for shawls, and for all non-enumerated manufactures of wool, and for fabrics made on frames.

§§ 393–'5 provide for other woolen fabrics.

§ 396 for clothing and wearing apparel, felts, plushes, and other pile fabrics of wool, &c.

§ 397 for various outside wraps for ladies' and children's apparel at the same rate of duty as in the previous paragraph.

§ 398 for various minor manufactures of wool.

§§ 399–408 for all varieties of carpets and carpetings.

26 Stat. at L., 596–'8.

In conclusion, then, we submit that the true principle of construction is to give effect to all these provisions, and that it would be as sensible to hold that a Brussels or Axminster carpet was dutiable as a pile fabric as to sustain the contention of the Government in this case.

STEPHEN G. CLARKE,
WM. B. COUGHTRY,
Of Counsel.

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Supreme Court of the United States.

OCTOBER TERM, 1892.

Term No., 825.

HICKS ARNOLD, JAMES M. CONSTABLE, AND FREDERICK A. CONSTABLE, CONSTITUTING FIRM OF ARNOLD, CONSTABLE & CO., APPELLANTS,

vs.

THE UNITED STATES, APPELLEE.

EXTRACT FROM H. R. REPORT No. 1466, FIFTY-FIRST CONGRESS, FIRST SESSION.

Mr. McKINLEY, from the Committee on Ways and Means, submitted the following report (to accompany H. R. 9416):

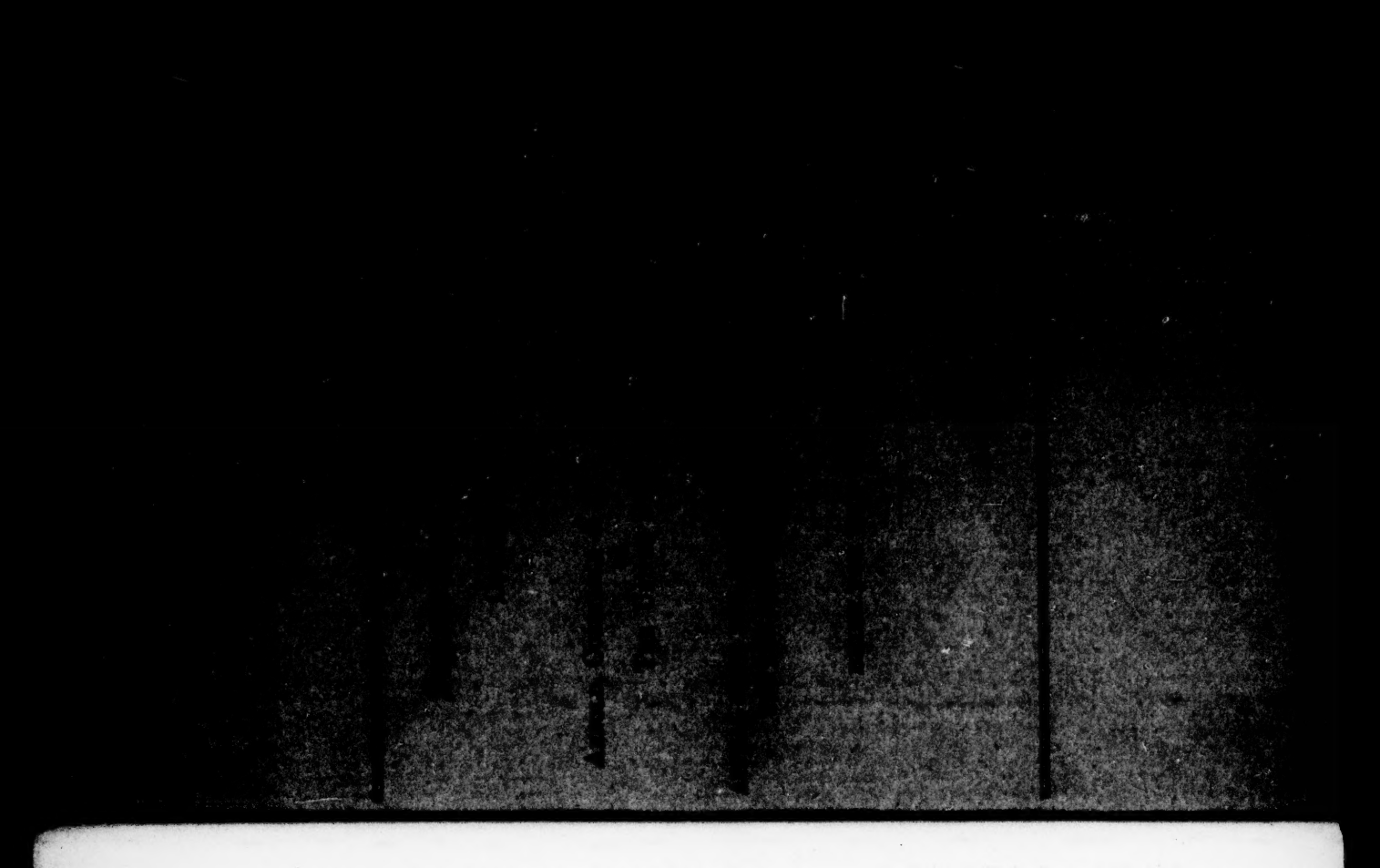
* * * * * * *

Woolen Goods.

* * * * * * *

In revising the woolen-goods schedule so as to afford adequate protection to our woolen manufacturers and wool-growers, we have continued the system of compound duties which have proved to be so essential in any tariff which protects wool, providing first for a specific compensatory pound or square yard duty equivalent to the duty which would be paid on the wool if imported, for the benefit of the wool-grower, and an ad valorem duty of from 30 to 50 per cent., according to the proportion of labor required in the manufacture of the several classes of goods, as a protection to the manufacturer against foreign competition, and 10 per cent. additional upon ready-made clothing for the protection of the clothing manufacturers.

* * * * * * *



Supreme Court of the United States.

OCTOBER TERM, 1892.

ARNOLD, CONSTABLE & CO., APPELLANTS,
vs.
THE UNITED STATES. } No. 825.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

The appellants imported into the port of New York, per steamship *Alaska*, several cases containing knit woollen shirts, drawers, and hosiery.

The appraiser classified the merchandise as "*wool wearing apparel*," and the collector assessed duty, accordingly, at the rate of 49½ cents per pound and 60 per cent. ad valorem, under paragraph 396 of the tariff act of 1890 (26 Stat., 597), against the importers' protest that the merchandise should be classified as "*knit fabrics*," dutiable at the rate of 44 cents per pound and 50 per cent. ad valorem (p. 7).

These two provisions of the tariff are as follows:

396. On clothing, ready made, and articles of wearing apparel of every description, made up or manufactured wholly or in part, not specially provided for in this act, felts not woven, and not specially provided for in this act, plushes and other pile fabrics, all of the foregoing, composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, the duty per pound shall be four and one-half times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto sixty per centum ad valorem.

392. On woollen or worsted cloths, shawls, knit fabrics, and all fabrics made on knitting machines or frames, and all manufactures of every description made wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, not specially provided for in this act, valued at not more than thirty cents per pound, the duty per pound shall be three times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto forty per centum ad valorem; valued at more than thirty and not more than forty cents per pound, the duty per pound shall be three and one-half times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto forty per centum ad valorem; valued at above forty cents per pound, the duty per pound shall be four times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto fifty per centum ad valorem.

APPEAL TO BOARD OF GENERAL APPRAISERS.

On appeal to the Board of General Appraisers the action of the collector was reversed and he was ordered to classify the merchandise and assess duty under paragraph 392, as contended for by the importers (pp. 2–5).

APPEAL TO CIRCUIT COURT.

Thereupon the collector appealed against that ruling to the United States circuit court for the southern district of New York (pp. 1, 2).

DECREE.

The circuit court (Lacomb, J.) reversed the decision of the Board of General Appraisers and affirmed the action of the collector (pp. 156, 157), and thereupon this appeal was prayed for and allowed (pp. 157, 158).

ARGUMENT.

The attempt, in this case, to withdraw such knit goods as shirts, drawers, etc., from the classification of "*articles of wearing apparel of every description*," under par. 396, encounters a grave difficulty at the threshold, which the Board of General Appraisers tried to explain away, but which the learned circuit judge found to be invincible.

The difficulty referred to grows out of the exception of "*knit goods*" from the operation of paragraph 366, of the *tariff of March 3, 1883* (22 Stat., 509, Schedule K,), which is as follows:

> Clothing, ready-made, and wearing apparel of every description, not specifically enumerated or provided for in this act, and balmoral skirts, and skirting, and goods of similar description, or used for like purposes, composed wholly or in part of wool, worsted, the hair of the alpaca, goat, or other animals, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, *except knit goods*, forty cents per pound, and in addition thereto, thirty-five per centum ad valorem; endless belts or felts for paper or printing machines, twenty cents per pound and thirty per centum ad valorem.

Paragraph 366 (T. I.) of the tariff of 1883 and paragraph 396 of the tariff of 1890 tax "articles of wearing apparel of every description," partly or wholly made of wool, etc.; and if, in the judgment of Congress, it was necessary to except "knit goods" in the tariff of 1883 to prevent them from being taxed as wearing apparel, it would seem to be a logical and a necessary inference from the *omission* to except "knit goods" in the tariff of 1890, that it was the intention of Congress to tax them as wearing apparel upon the familiar principle, compactly stated by Chief Justice Marshall, in *Brown* v. *Maryland* (12 Wh., 438), "that the exception of a particular thing

from general words proves that, in the opinion of the lawgiver, *the thing excepted would be within the general clause had the exception not been made.*"

In answer to this argument, the Board of General Appraisers say that the exception of "knit goods" in the act of 1883 was *mere supererogation*, to show which they point to paragraph 413, of the present tariff, which taxes "articles of wearing apparel of every description, *including knit goods*," made of silk in whole or in part, which, they say, shows that Congress did not regard "knit goods" as wearing apparel.

But the inference is not fairly drawn, for the words "*including knit goods*" show, rather, that Congress regarded knit goods as belonging to the classification of "wearing apparel." If the association of "knit goods" with "wearing apparel" had been forced and incongruous, it is to be presumed that Congress would have used very different language. The language employed is that of superabundant caution merely.

It is to be observed, furthermore, that we find in the *Act of March 2, 1867* (14 Stat., 561), and in the Revised Statutes (p. 472), in the paragraph taxing "wearing apparel of every description," an exception of "knit goods."

In the same paragraphs we also find that the words "wearing apparel of every description" are followed by the words "*and balmoral skirts*," from which, according to the argument of the Board of General Appraisers, we should infer that Congress did not consider "balmoral skirts" as belonging to the classification of wearing apparel, and so mentioned them.

It is an instructive fact that in the formidable array of statutory citations appended to the appellee's brief we find that where Congress intended to tax "knit goods" otherwise than under the designation of wearing apparel it has specified by name the articles for taxation, such as "socks, stockings, wove shirts and drawers, and all similar articles made on frames," etc. (Act of July 14, 1862, § 13, 12 Stat., 556. See, also, act June 30, 1864, 18 Stat., 208.)

That Congress found it proper to resort to this particularization seems to amount to a demonstration that it considered that "wearing apparel of every description" comprehended "knit goods" used as clothing.

There is in the present tariff also another departure from the language of the act of 1883, in dropping the term "knit goods" and substituting for it that of "knit *fabrics*," which latter the learned circuit judge thought was not intended to embrace the merchandise in question, but knit material in the piece and not made up, although he did not put his decision on that ground. It would seem, indeed, that Congress meant to make a change of sense by this change of terms.

Considering the great attention and study that have been given to the wool feature of the tariff, and that Congress has repeatedly specially excepted "knit goods" in taxing woolen wearing apparel, it is farfetched to say that Congress *intended to make the same exception by taxing "knit fabrics" in an entirely different paragraph from that in which woolen wearing apparel is taxed.* It is not to be presumed that Congress would have abandoned the natural

and previously used way of making the exception and resorted to one that was certain to produce difficulty.

When we consider that it is the *use* of an article that determines its classification as wearing apparel, it would be remarkable if the use of "knit goods" as clothing did not necessitate their classification as "wearing apparel" under the general language of the present tariff.

The next question to be considered is whether paragraph 392 makes so special a provision for the merchandise in question as to cause it to prevail over paragraph 396, which must, otherwise, control.

The Board of General Appraisers held that the provision for "knit fabrics and all fabrics made on knitting machines or frames," in paragraph 392, was more specific than the term wearing apparel, whose classification is fixed by use.

But the learned circuit judge, reviewing the facts as well as the law, like a chancellor, as should be remembered, held that "knit fabrics" embraced not only the species of merchandise in question, but also "another and very large group of 'knit fabrics,' which are illustrated before us here by Exhibits K, L, Q, etc., which are emphatically piece goods of various sizes and shapes. It was, then, entirely fair to say that a designation which covered as well "knit fabrics" for clothing as a great deal more besides, was not "a bit more specific" than "the phrase 'articles of wearing apparel.'"

The following is the opinion of the circuit court, as given in the Federal Reporter (Vol. 46, p. 512):

> These articles are, of course, within the broad, general meaning of the phrase "wearing apparel," and, unless they are, by other language in the act, taken out of that category, the original assessment of duty by the collector was correct. It is claimed that they are thus excepted by reason of the circumstance that, in the paragraph containing the enumeration of articles of wearing apparel, there appear the words, "not specially provided for by this act;" and, also, elsewhere (to-wit, in paragraph 392), a rate of duty upon "woollen and worsted cloth, shawls, knit fabrics, all fabrics made on knitting machines or frames, * * * not specially provided for in this act."
>
> I am very strongly of the opinion, in view of the dropping of the phrase "except knit goods" from the paragraph in the old act referring to articles of wearing apparel, and in view of the change of the phrase "knit goods" to "knit fabrics" in paragraph 392, that the word "fabrics," as used therein, relates to the piece of goods or the unassembled pieces out of which garments are made; but I do not put the decision of this case upon that ground. If the articles here are "knit fabrics," it also appears quite clearly that there is another and very large group of "knit fabrics," which are illustrated before us here by Exhibits K, L, Q, etc., which are emphatically piece goods of various sizes and shapes. There are certainly two large groups, then, of knit fabrics. Now the exception in paragraph 396—the one dealing with articles of wearing apparel—is of articles *specially* provided for elsewhere in the act. In view of the fact that the words "knit fabrics," if they cover these articles, cover articles suitable for wearing apparel and articles not suitable at all for wearing apparel, I can not see that it is one bit more specific than the phrase "articles of wearing apparel."
>
> There seems very little difference between two such phrases as to relative specificness. It is difficult to determine, as between them, which is the general and which is the specific; but I am inclined to the conclusion which I have heretofore expressed in the *Fertilizer Case* (*Heller* v. *Magone*, 38 Fed. Rep. 908), that that phrase is the more specific one which determines the rate of duty on an individual article by the specific use to which that particular article is put. Therefore, as between these two paragraphs, 392 and 396 (assuming that these articles are "knit fabrics" for the purpose of deciding this case), I have reached the conclusion that the more specific paragraph is 396, and that the articles are dutiable as wearing apparel. The result of that will be to reverse the decision of the board of appraisers, and determine the specification of the merchandise to be as stated, to wit, wearing apparel, under paragraph 396.

It would seem clear that a designation of articles *by the particular use to which they are put* is more specific than a general trade designation which covers as well

articles applied to such use as a large number besides, *not so applied*, whether of that number the actual importations into this country are large or small, Congress having had in view *possible* as well as *actual* importations.

At the outside, the former designation is quite as specific as the latter.

The counsel for the appellants are not happy in the use they make of the case of *Solomon* v. *Arthur* (102 U. S., 212). They quote from the opinion of Mr. Justice Bradley, as follows:

> It is observable that the description of "manufactures made of mixed materials, in part of cotton, silk," etc., is more general than that of "manufactures of which silk is the component part of chief value." Logically, the two phrases standing together in the act or system of laws would be related as follows: "Goods made of mixed materials, cotton, silk, etc., shall pay a duty of 35 per cent; *but, if* silk is the component part of chief value, they shall pay a duty of fifty per cent."

They then proceed to make this appropriation of the quotation for the purposes of their case:

> Applying this to the present case must not we say, in view of the facts, that the description "clothing ready made and articles of wearing apparel of every description" is more general than that of "all fabrics made on knitting machines or frames." Must we not also continue, "Logically the two phrases standing together in the same act or system of laws would be related as follows:"
>
> "Clothing ready made and articles of wearing apparel, 49½ cents per pound and sixty per centum *ad valorem, but if* knit goods or fabrics made on knitting machines or frames, 44 cents per pound and fifty per centum *ad valorem*."

Now, if we make the interpolation in the last paragraph parodying Mr. Justice Bradley's opinion, which must be made to fit it to this case, the fallacy of the argument for the appellants is brought into relief. We reproduce the paragraph with the interpolation in capitals:

"Clothing ready made and articles of wearing apparel

of every description 49½ cents per pound and sixty per centum *ad valorem*, *but if* knit goods or fabrics made on knitting machines or frames [WHETHER FOR WEARING APPAREL OR FOR ANY OTHER USE OR PURPOSE WHATEVER], 44 cents per pound and fifty per centum *ad valorem*."

Here we see the fallacy of the opposite argument presented in all its nakedness. Nothing could be more inapplicable to this case than that quotation from *Solomon* v. *Arthur*.

We submit that there does not appear to be error in the decree, and that a decree of affirmance seems proper.

WM. A. MAURY,
Assistant Attorney-General.

Supreme Court of the United States.

OCTOBER TERM, 1892.

ARNOLD, CONSTABLE & Co.
vs.
THE UNITED STATES. } No. 825.

DEFINITIONS OF "WEARING APPAREL."

WEARING APPAREL.—Garments worn, or made for wearing; dress in general.

Century Dictionary.

WEARING (*a*).—Applied to what is worn; as, *wearing* apparel.

WEARING (*n*).—That which one wears; clothes; garments.

Give me my nightly *wearing* and adieu.—*Shak.*

Imperial Dictionary.

WEARING (as adj.)—Applied to what is worn; fit for wearing; as, wearing apparel.

As substantive:

1. The act or state of carrying on or appendant to the body; the state of having on, as clothes.
2. That which is worn; dress, clothes, garments.

Encyclopedia Dictionary.

WM. A. MAURY,
Assistant Attorney-General.

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Supreme Court of the United States.

OCTOBER TERM, 1892.

ARNOLD, CONSTABLE & CO., APPELLANTS,
vs.
THE UNITED STATES.
} No. 825.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

REFERENCES TO THE TESTIMONY ADDUCED BY THE COLLECTOR.

Charles E. Spencer testifies that the term "fabric" applies to piece goods and not to any finished garment, and denotes the "texture" of the article of which garments are made (pp. 29, 30). He says also that the merchandise in question is known as shirts, or undershirts and drawers, and as "knit underwear or knit shirts and drawers" (p. 30).

The witness also testifies that there are knit fabrics, outside of shirts, drawers, and stockings, such as Jersey cloth (p. 33) and various descriptions of stockinet cloth

(Exhibit H), and a fabric much used in the rubber factory (pp. 36, 37). But outside of stockings, shirts, and drawers this witness had not much acquaintance with "knit fabrics" (pp. 33, 34).

Edward H. Davison: Never heard socks, stockings, undershirts, or drawers called "knit fabrics"—always called socks, etc. Has seen a great variety of goods similar to the stockinet samples (Exhibit H, p. 39). Is a growing business in knit cloths, which are supplanting in many cases the woven cloths (p. 40). The witness refers to Exhibits K and L. He says that on October 1, 1890, and prior thereto "*there was a large variety of knit fabrics known in the trade and commerce of this country other than underwear*" (p. 41).

Witness produces samples (Exhibits M and N, p. 41). He says "many of the dry-goods stores kept that article (Exhibit N) for underclothing in the name of stockinet, preferring to buy the material and manufacture their own garments rather than to buy those that were ready made, being able to get any shape or style that they might want" (p. 41). These goods are imported in large quantities (p. 42).

Edward H. Davison (recalled) produces another sample of general knit merchandise of which Exhibits O and P are made (p. 45). This witness refers to the "*very extensive variety*" of knit fabrics or cloths of wool or worsted on the market in this country prior to October 1, 1890 (p. 46), "largely used for the linings of rubber shoes and arctic shoes and rubber boots, and with a back thread for coatings and cloakings and plushes—you get plush effects

on the knitting machine" (p. 46). Knows the fabric called "Terry cloth." Says he would not call a stocking a "fabric" (p. 59).

John D. Ashwell, manager of the Norfolk and New Brunswick Hosiery Company: "I never had a man ask me for knit fabrics in our line of business that I know of. Had he written to me for knit fabrics I should have told him *that we did not have them, that we did not sell them*, and sent him to parties who did make them." Again, shirts, drawers, socks, stockings were never, to his knowledge, known as "knit fabrics" or "fabrics made upon knitting machines" in the trade prior to October 1, 1890 (p. 72).

James C. Cooley (p. 77), Daniel Mackay (p. 80), Frederick W. Brooks (p. 82), George H. Sutton (p. 83), William A. McLachlan (p. 85), and several other witnesses confirm the testimony previously given.

This testimony shows, conclusively (1), that there is no such trade term as "knit fabrics" as applicable to shirts, socks, and drawers; (2) that the circuit judge was correct in the meaning he attributed to "*fabric*;" and (3) that the learned judge was also perfectly correct in stating that there is a very large department of knit goods outside of shirts, drawers, socks, and stockings.

WM. A. MAURY,
Assistant Attorney-General.